

No. 11692

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit

---

P. G. DENSON,

Appellant,

vs.

IRENE GLADYS MAPES, also known as Mrs.  
Charles W. Mapes, Charles W. Mapes, Jr.,  
Gloria Mapes and Chas. W. Mapes Company,  
a co-partnership.

Appellees.

---

Transcript of Record  
In Two Volumes  
VOLUME I  
Pages 1 to 456

---

Upon Appeal from the District Court of the United States  
for the District of Nevada

FILED

Rotary Colorprint, 870 Brannan Street, San Francisco

9-16-'47-60

OCT - 2 1947

PAUL P. O'BRIEN,

CLERK



No. 11692

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit

---

P. G. DENSON,

Appellant,

vs.

IRENE GLADYS MAPES, also known as Mrs.  
Charles W. Mapes, Charles W. Mapes, Jr.,  
Gloria Mapes and Chas. W. Mapes Company,  
a co-partnership.

Appellees.

---

Transcript of Record  
In Two Volumes  
VOLUME I  
Pages 1 to 456

---

Upon Appeal from the District Court of the United States  
for the District of Nevada





## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amended Complaint for Specific Performance	2
Answer to Plaintiff's Amended Complaint for Specific Performance .....	24
Appeal:	
Notice of .....	925
Undertaking for Costs on .....	926
Statement of Points and Designation of Parts of Record Upon Which Appellant Intends to Rely on .....	932
Designation of Contents of Record on ....	940
Designation of Additional Portions of Record, Proceedings and Evidence to be Included in Record on .....	942
Certificate of Clerk, DC .....	930
Decision and Findings of Fact and Conclusions of Law .....	908
Findings of Fact .....	914
Conclusions of Law .....	919

INDEX	PAGE
Direct Interrogatories to be Propounded:	
Barash, S. P.....	47
Exhibit A—Agreement.....	53
Huckins, Leon.....	64
Hull, Thomas E.....	69
London, Dan E.....	76
Mason, Miss Ruth.....	82
Stone, Douglas.....	87
Taylor, Will P.....	94
Thompson, George T.....	101
Toy, Harvey M.....	108
Designation of Contents of Record on Appeal .	940
Designation of Additional Portions of Record, Proceedings and Evidence to be Included in Record on Appeal .....	942
Names and Addresses of Attorneys .....	1
Notice of Motion by Defendants to Dismiss and, Subject Thereto, to Strike Portions of Plain- tiff's Amended Complaint .....	17
Exhibit B—Supplemental Affidavit of Mrs. Chas. W. Mapes in Support of Defend- ants' Motion to Dismiss Amended Com- plaint, or for Summary Judgment .....	21
Notice of Appeal .....	925
Statement of Docket Entries of April 24, 1947	924
Statement of Points Upon Which Appellant Intends to Rely on the Appeal and Designa- tion of Parts of Record Upon Which Appel- lant Intends to Rely .....	932

## INDEX

## PAGE

Transcript of Testimony .....	116
-------------------------------	-----

## Depositions:

Barash, S. P.....	779
Huckins, Leon.....	709
Hull, Thomas E.....	788
London, Dan E.....	766
Mason, Ruth .....	724
Stone, Douglas.....	727
Taylor, Will P.....	774
Thompson, Geo. T.....	744
Toy, Harvey M.....	755

Opening Statement of Mr. Cooke .....	130
--------------------------------------	-----

Opening Statement of Mr. Platt .....	117
--------------------------------------	-----

Undertaking for Costs on Appeal .....	926
---------------------------------------	-----

## Witnesses, Defendant:

Denson, P. G. (Adverse)

—examination by Mr. Cooke .....	861
---------------------------------	-----

Mapes, Chas. W., Jr.

—direct .....	866
---------------	-----

—cross .....	879
--------------	-----

—redirect .....	894
-----------------	-----

Mapes, Gloria

—direct .....	855
---------------	-----

—cross .....	858
--------------	-----

Mapes, Mrs. Chas. W.

—direct .....	823
---------------	-----

—cross .....	840
--------------	-----

—redirect .....	853
-----------------	-----

	PAGE
Witnesses, Plaintiff:	
Cooke, H. R. (Adverse)	
—direct .....	692
Denson, Peter G.	
—direct .....	159, 795
—cross .....	282, 807
—redirect .....	316, 820
—recross .....	317
—Rebuttal:	
—direct .....	897
—cross .....	902
Mapes, Chas. W., Jr. (Adverse)	
—cross examination by Mr. Platt ....	615
—examination by Mr. Cooke .....	665
—redirect .....	688
Mapes, Mrs. Chas. W. (Adverse)	
—direct .....	434, 502
—cross .....	531
—redirect .....	608
—recross .....	592
Moorehead, T. P.	
—direct .....	320
—cross .....	375
Slocum, Francis Harvey	
—direct .....	394
—cross .....	410
—redirect .....	427, 433
—recross .....	431

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

SAMUEL PLATT,

First National Bank Building,  
Reno, Nevada,  
For the Appellant.

JOHN D. FURRH, JR.,

First National Bank Building,  
Reno, Nevada,

H. R. COOKE,

First National Bank Building,  
Reno, Nevada,  
For the Appellees. [1\*]

---

\* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, in and  
for the District of Nevada

No. 552

P. G. DENSON,

Plaintiff,

vs.

IRENE GLADYS MAPES, also known as MRS.  
CHARLES W. MAPES, CHARLES W.  
MAPES, JR., GLORIA MAPES, and CHAS.  
W. MAPES COMPANY, a co-partnership,  
Defendants.

### AMENDED COMPLAINT FOR SPECIFIC PERFORMANCE

Now Comes the above named plaintiff by leave of  
Court first had and obtained, and files this, his  
amended complaint, against the above named de-  
fendants, and for cause of action alleges:

#### I.

That during all the times mentioned herein the  
above named plaintiff has been, and now is, a citizen  
and resident of the State of California. That during  
all the times mentioned herein the said defendants  
have been, and now are, citizens and residents of  
the State of Nevada. That during all of the times  
mentioned herein each of said defendants has been,  
and is now, [14] a citizen and resident of the State  
of Nevada. That the defendant, Chas. W. Mapes  
Company, consisting of the defendants, is a co-  
partnership organized and existing under the laws

of Nevada. That the matter involved in controversy herein exceeds the sum and amount of Three Thousand (\$3,000.00) Dollars.

That the said defendant, Charles W. Mapes, Jr., has declined and refused, and still declines and refuses to join as a party plaintiff herein. That he is the son of the defendant, Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, and has conspired and confederated with the said defendants, Irene Mapes, Gloria Mapes, and said co-partnership, to defeat the said plaintiff out of his just rights and equities herein. That his interests herein are antagonistic and adverse to plaintiff. That the said Charles W. Mapes, Jr., is a necessary, proper and indispensable defendant herein.

## II.

That plaintiff is informed and believes, and upon information and belief states the fact to be, that the said defendant, Chas. W. Mapes Company, a co-partnership, was organized on or about the 9th day of November, 1943, and ever since has been, and now is, conducting, carrying on and transacting business, and has never since been dissolved.

## III.

That the above named defendant, Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, was, on the 24th day of September, 1945, at which time and date the agreements hereinafter alleged and attached hereto as Exhibit "A" was entered into, seized in fee of that certain real property situated



at the Southeast corner of Virginia and First Streets, in the City of Reno, Nevada, having a frontage on Virginia Street of [15] 167.64 feet, and a frontage on First Street of 139.55 feet.

#### IV.

Plaintiff is informed and believes, and upon information and belief states the fact to be, that on or about the 6th day of November, 1945, the said defendant, Irene Gladys Mapes, conveyed by deed of conveyance to Mrs. Charles W. Mapes, Charles W. Mapes, Jr., and Gloria Mapes, co-partners doing business under the name of Chas. W. Mapes Company of Reno, Nevada, the lands and premises and real estate described in said agreement of September 24, 1945. That said conveyance at the time of its execution and prior thereto was made with knowledge by all the defendants of the existence of said agreement.

#### V.

That on or about the 24th day of September, 1945, the above named plaintiff and the above named defendants, Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, and Charles W. Mapes, Jr., entered into a written agreement, whereby the above named defendant, Irene Gladys Mapes, agreed to grant a lease to the said plaintiff and to the said defendant, Charles W. Mapes, Jr., and the said plaintiff and the said defendant, Charles W. Mapes, Jr., agreed to receive a lease from the said defendant, Irene Gladys Mapes, of a certain new fireproof



hotel, apartment, store building and garage to be erected by said defendant, Irene Gladys Mapes, on said lands and premises hereinabove described, excepting from said lease eight (8) store spaces on Virginia Street and three (3) store spaces on First Street; a copy of which said written agreement is attached hereto, marked Exhibit "A", made part hereof, and to which reference is hereby made. That said agreement is certain, [16] definite, just, reasonable, and mutual in its obligations and in all its parts.

That the rental prices and consideration for the use and occupancy of said building, with the exceptions above noted, to be expressly set forth in said lease, and which are expressly set forth in said written agreement, together with the time of payment, is as follows:

- 5% of gross receipts from foods sales.
- 10% of gross receipts from liquors, wines and beer sales.
- 30% of gross receipts from hotel, rooms and apartments.
- All rents payable monthly.

Provided, that in the event the said percentage of gross receipts shall not equal monthly:

For Coffee Shop, Dining Room and Kitchen .....	\$ 600.00
For Lounge .....	1000.00
For Sky Room .....	333.33
For Mezzanine Floor, Banquet Room....	150.00

Then in such case, the said tenants shall make up and pay the said deficiency on any of the said four classifications so failing.

Plaintiff further alleges that the said written agreement likewise expressly provides the term of said lease, to wit:

“That the period of said lease shall be not less than Twenty (20) years from the date the premises are in condition for possession thereof to be delivered.”

Plaintiff further alleges that the said written agreement likewise expressly provides the time of the payment of said rental, namely, “monthly.”

Plaintiff further alleges that the said written agreement expressly acknowledges “valuable and sufficient consideration present and received.”

## VI.

Plaintiff further alleges that in addition to the sum of Ten Thousand (\$10,000.00) Dollars in cash paid by the said plaintiff to the said defendant, Irene Gladys Mapes, on October 4, 1945, and in addition to the other considerations set forth in said agreement, the said plaintiff, at the request of the defendant, Irene Gladys Mapes, engaged an architect and contractor now constructing the hotel building upon said premises, conferred upon many occasions with said architect, with the contractor employed on the work, and with members of their official staffs, with the defendants, and expended the necessary time and expense for attendance upon said conference.

~~Further, the said plaintiff, at the request of the defendant, Irene Gladys Mapes, secured a large and appreciable loan for the said defendants, to finance the construction of the said hotel building, which the said defendant, Irene Gladys Mapes, informed plaintiff she was unable successfully to negotiate through other channels.~~

Further the said plaintiff, at the request of the defendant, Irene Gladys Mapes, attempted to secure a large and appreciable loan for the said defendants to finance the construction of the said hotel building, which the said defendant, Irene Gladys Mapes, informed the plaintiff she was unable to successfully negotiate through other channels. That said plaintiff entered into such negotiations with financially responsible persons and was assured by them and plaintiff in turn assured Mrs. Mapes, that he was able to secure the loan.

This amendment was allowed by Order of Court of Oct. 28, 1946.

/s/ O. F. PRATT,  
Deputy Clerk.

## VII.

Plaintiff further alleges that in order to carry out the terms, conditions and covenants of said agreement, by way of part performance thereof on his part, and all within the knowledge of said defendants, and each of them, this plaintiff obtained plans, specifications and prices from various firms on furnishings, equipment, accessories and supplies to be

installed in said hotel at the cost and expense of plaintiff and defendant, Chas. W. Mapes, Jr. [18]

As a further consideration, the above named plaintiff, relying on the good faith of said defendants, and with their knowledge, sold, at considerable financial sacrifice, a hotel of which he was the sole owner and proprietor.

That the good and valuable considerations, in said agreement provided, and hereinabove alleged, were, and are, fair, just and equitable to said defendants herein, and each of them.

### VIII.

~~That said agreement, Exhibit "A", was prepared by the attorney for the defendants, executed by the said defendants, Irene Gladys Mapes and Charles W. Mapes, Jr., sent to the plaintiff by mail to Los Angeles, California, promptly signed and executed by him and promptly returned by mail to the attorney for the said defendants. That since the execution of said agreement plaintiff has always been ready and willing to receive from the defendant, Irene Gladys Mapes, a lease of said hotel structure whenever tendered, or to join in the execution of such a lease, and defendants have been so informed and advised by plaintiff.~~

Par. 8. That said agreement, Exhibit A, was prepared by the attorney for defendant, executed by the said defendants, Irene Gladys Mapes and Charles W. Mapes, Jr., sent to the plaintiff by mail to Los Angeles, California, and later signed and

executed by the plaintiff in the office of H. R. Cooke, attorney for the defendants, at Reno, Nevada.

This amendment was allowed by Order of Court of Oct. 28, 1946.

/s/ O. F. PRATT,  
Deputy Clerk.

IX.

That while said agreement provides that the parties thereto shall immediately enter into a discussion with each other as to the terms, conditions and details of said lease, and that said terms, conditions and details shall be mutually agreed upon between the parties hereto within ten (10) days after the written contract for the construction of said structure has been entered into by the first party, and within ten (10) days after the actual construction has been commenced, and while there is a provision in said agreement that time is [19] the essence thereof, this plaintiff alleges that the said defendants, by word, act and conduct upon the part of each and all of them have waived such time provisions, and with intention so to waive, and with knowledge, understanding and recognition of such waiver; and each and all of them are estopped and foreclosed from disclaiming said waiver, or asserting, or claiming, or relying upon, said time provisions, or any of them. Repeatedly since the execution of said agreement, and for a continuous period following the expiration of the time provisions hereinabove referred to, the said defendants, by



word, acts and conduct have led this plaintiff to believe that such a lease would be tendered and would be properly executed by all of the parties hereto, and plaintiff placed full reliance on defendants' said word, acts and conduct. That almost continuously, from the 24th day of September, 1945, the date of the execution of said agreement, up to and including the 1st day of April, 1946, all of the parties hereto have been conferring at various times and intervals, and have treated and considered during all of said period of time, said agreement in continuous full force and effect, with the belief on the part of plaintiff, and representation by the said defendants that they were acting in good faith, and would tender and execute said lease. That on or about the 28th day of December, 1945, plaintiff, at the request of defendants, met the defendant, Charles W. Mapes, Jr., at the office of the architect of said hotel building in Oakland, California, for the purpose of discussing some changes in the plans for said building. During the month of March, 1946, plaintiff conversed by phone between Los Angeles and Reno with the defendant, Irene Gladys Mapes, about the hotel [20] and the plans therefor. Plaintiff also told her that he would call the defendant, Charles W. Mapes, Jr., the next day and ask him to come to Los Angeles to look over plans for furniture and interior decorating. Later, by appointment between plaintiff and the defendant, Charles W. Mapes, Jr., plaintiff met the said defendant on or about April 1, 1946, together with an interior decorator of Barker Bros., Los Angeles, California, at

the office of the architect of said hotel structure in Oakland, California.

During the first part of January, 1946, plaintiff went to San Francisco and interviewed the Dohrmann Hotel Supply Company and instructed said company to get out plans for new equipment, designs and prices for dining rooms, kitchens, bars, and other matters appertaining to hotel equipment, all of which these defendants well knew. That in the same month of January, 1946, plaintiff came to Reno and conferred with the defendant, Irene Gladys Mapes, at her home in Reno, Nevada. That upon said interview the said defendant, Irene Gladys Mapes, expressed pleasure with the progress being made.

## X.

That during the period of time from September 24, 1945, the date of the execution of said agreement, up to and including about the 10th day of April, 1946, the said defendants retained plaintiff's Ten Thousand (\$10,000.00) Dollar cash deposit, never once during that interval of time offered to return it, nor did any one of said defendants during that interval of time, by word, act or conduct, lead this plaintiff to believe that said agreement would be repudiated, and that they would not enter into and execute the lease as in said agreement provided.

## XI.

That in further recognition of the waiver by defendants of the time element hereinabove set forth

and the estoppel herein, the said defendants caused to be published in local newspapers and trade journals, featured and prominent illustrated articles stating that plaintiff would conduct and operate said hotel.

## XII.

Plaintiff further alleges that a lack of observance and performance of the time elements in said agreement above referred to, was the fault of the said defendants and not of this plaintiff. That though plaintiff told defendants he was ready to sign a lease whenever they should prepare and submit it, no form of lease was ever tendered plaintiff by defendants, or any of them. That though the defendants had superior knowledge as to when final plans for said hotel structure were approved and when actual construction commenced, yet none of them disclosed said facts to this plaintiff, nor was an interview or conference sought for the final preparation of the lease. Plaintiff further alleges that said defendants, and each of them, are, and were at fault, and were neglectful and delinquent in not seeking or arranging such an interview or conference within any of the periods of time set forth in said agreement.

## XIII.

Plaintiff further alleges that all the material and essential provisions of the proposed lease were, and are, expressly stated and set forth in said agreement, as hereinabove more particularly alleged, and



the parties hereto expressly agreed that such material and essential provisions [22] should be contained within said lease. That all other customary matters and things usually contained in similar leases were and would be merely incidental and in accordance with custom and usage.

#### XIV.

Plaintiff further alleges that notwithstanding the continued acts, conduct and representations of the defendants, as above set forth, notwithstanding the binding obligations of said agreement, and the ability of the defendants to perform, the said defendants personally and through their attorney, on or about the 10th day of April, 1946, without cause or reason, repudiated said written agreement, declined and refused further performance on their part under it, and stated to plaintiff that no lease would be tendered, granted or entered into, as in said agreement provided. That no cause or reason was given plaintiff for such repudiation.

#### XV.

Plaintiff further alleges that he has fully and faithfully performed all acts and things, covenants and conditions in said agreement required of him to be performed, and has always been ready, willing and able, and is now ready, willing and able to enter into and execute said lease, as in said agreement provided, and fully and faithfully to perform in accordance therewith, and to comply with all of its terms, covenants agreements and conditions.

## XVI.

Plaintiff further alleges that it was at the special instance and request of the defendant, Irene Gladys Mapes, that her son, Charles W. Mapes, Jr., was associated with plaintiff as a second party to said agreement. That plaintiff reposed [23] sufficient faith and confidence in the said Charles W. Mapes, Jr., to believe that he would faithfully carry out his obligations under said agreement and join with plaintiff in demanding and executing the lease, as in said agreement provided. But the said defendant, Charles W. Mapes, Jr., has wrongfully, unjustly and inequitably, and in fraud of plaintiff's rights, conspired and confederated with his co-defendants in repudiation of said agreement. That plaintiff has always been ready, willing and able, and is now ready, willing and able personally to assume, pay and perform in full all obligations, acts, or things required to be performed by the said defendant, Charles W. Mapes, Jr., under said agreement and lease, and to take and execute said lease in his own name.

## XVII.

Plaintiff further alleges that he has no plain, speedy or adequate remedy at law.

## XVIII.

Plaintiff further alleges that the defendants have not done equity, nor have they offered to do equity.

Wherefore, plaintiff prays that a decree for specific performance of said agreement be made and

entered herein in favor of the plaintiff and against the said defendants. That the above entitled Court order and decree that within twenty (20) days from and after the entry of said decree, or such other time as the Court may determine, the said parties hereto be ordered and directed to execute a good and sufficient lease upon the hotel property, with the exception of eight (8) store spaces on Virginia Street and three (3) store spaces on first Street, hereinabove particularly described, for a term of twenty (20) years, and for a rental price, consideration, and [24] conditions, as in said agreement provided. That said lease shall provide that the plaintiff and the defendant, Charles W. Mapes, Jr., at their own cost, provide and place in said structure such furniture, fixtures and equipment as shall be suitable, proper and necessary to furnish and equip the same as a first class hotel and apartment building, and that they shall execute and deliver to the defendant, Irene Gladys Mapes, a first chattel mortgage on said furniture, fixtures and equipment, and to be provided in said lease. That the Court further order, adjudge and decree, such other and additional provisions to be contained in said lease as to fully effectuate the intent and purposes of the parties hereto, as in said agreement stated, and also to set forth all usual or necessary conditions to the end that the rights and interests of each party shall be properly conserved and protected.

That the Court further order, adjudge and decree as an alternative, that if sound principles of equity would be best subserved and applied herein, that

the plaintiff, solely and on his own behalf, and the said defendants execute said lease, as aforesaid, without the joinder of the defendant, Charles W. Mapes, Jr., as co-lessee therein.

That the Court retain jurisdiction herein to assure compliance with its orders, judgment and decree.

And for such other relief as in equity may be mete and proper, and for costs.

PLATT & SINAI,  
/s/ SAMUEL PLATT,  
Attorneys for Plaintiff. [25]

Service of the within and foregoing Amended Complaint is hereby accepted and admitted, by copy, for and on behalf of all the above named defendants, this 29th day of July, 1946.

/s/ JOHN D. FURRH, JR.,  
/s/ H. R. COOKE,  
Attorney for said Defendants.

[Endorsed]: Filed July 30, 1946. [26]

[Title of District Court and Cause.]

NOTICE OF MOTION BY DEFENDANTS TO  
DISMISS AND, SUBJECT THERETO, TO  
STRIKE PORTIONS OF PLAINTIFF'S  
AMENDED COMPLAINT

To: Plaintiff above-named, and Messrs. Platt &  
Sinai, his attorneys:

Take Notice that on the day and hour specified  
in the hereunto annexed Order of the Court, at the  
Federal court room at Reno, Nevada, the defend-  
ants above-named will move said court for an order  
or orders as follows:

I.

That plaintiff's Amended Complaint herein be  
dismissed, for in that: [27]

(a) Lack of jurisdiction by the Court over  
the subject matter;

(b) Failure of plaintiff's Amended Com-  
plaint to state a claim upon which relief can  
be granted.

II.

Subject to the foregoing, said defendants will  
move the said Court at the same time and place for a  
summary judgment, upon the ground that it affirm-  
atively appears from plaintiff's Amended Com-  
plaint and from the Affidavit of defendant Mrs.  
Chas. W. Mapes annexed to the original Notice of  
Motion to Dismiss herein, filed June 29, 1946, and

the Supplemental Affidavit of Mrs. Chas. W. Mapes in support of defendants' Motion to Dismiss Amended Complaint or for Summary Judgment of Dismissal, annexed hereto, marked Exhibit B and made a part hereof, together with the affidavits of Gloria Mapes and H. R. Cooke, both annexed to said original Notice of Motion, that plaintiff is entitled to no relief, and that defendants are entitled to a summary judgment that the action be dismissed with prejudice.

### III.

Subject to the foregoing, said defendants will, at the same time and place, move said Court for an Order or orders striking the portions of said Amended Complaint designated as follows:

1. Commencing with the word "That" in line 8, page 2, of said Amended Complaint, to and including the word "plaintiff" in line 14, said page, on the grounds said matter is redundant; is immaterial; is impertinent.

2. Commencing with the word "That" in line 30, page 3, of said Amended Complaint, to and including the word "parts" in line 2, page 4, on the grounds first above stated. [28]

3. Commencing with the word "and" in line 8, page 5, of said Amended Complaint, to and including the word "channels" in line 21, said page, on the grounds first above stated.

4. Commencing with the word "Plaintiff" in line 23, page 5, of said Amended Complaint, to and



including the word "jr." in line 30, said page, on the grounds first above stated.

5. Commencing with the word "As" in line 1, page 6, of said Amended Complaint, to and including the word "them" in line 8, said page, on the grounds first above stated.

6. Commencing with the word "That" in line 22, page 6, of said Amended Complaint, to and including the word "them" in line 8, page 7, on the grounds first above stated.

7. Commencing with the word "Repeatedly" in line 8, page 7, of said Amended Complaint, to and including the word "lease" in line 23, said page, on the grounds first above stated.

8. Commencing with the word "That" in line 23, page 7, of said Amended Complaint, to and including the word "California" in line 9, page 8, on the grounds first above stated.

9. Commencing with the word "During" in line 10, page 8, of said Amended Complaint, to and including the word "Made" in line 19, said page, on the grounds first above stated.

10. Commencing with the word "That" in line 21, page 8, of said Amended Complaint, to and including the word "provided" in line 30, said page, on the grounds first above stated.

11. Commencing with the word "That" in line 2, page 9, [29] of said Amended Complaint, to and including the word "hotel" in line 7, said page, on the grounds first above stated.

12. Commencing with the word "Plaintiff" in line 9, page 9, of said Amended Complaint, to and including the word "agreement" in line 25, said page, on the grounds first above stated.

13. Commencing with the word "Plaintiff" in line 27, page 9, of said Amended Complaint, to and including the word "usage" in line 4, page 10, on the grounds first above stated.

14. Commencing with the word "notwithstanding" in line 6, page 10, of said Amended Complaint, to and including the word "perform" in line 9, said page, on the grounds first above stated.

15. Commencing with the word "That" in line 15, page 10, of said Amended Complaint, to and including the word "repudiation" in line 16, said page, on the grounds first above stated.

16. Commencing with the word "Plaintiff" in line 27, page 10, of said Amended Complaint, to and including the word "name" in line 13, page 11, on the grounds first above stated.

On the hearing defendants will use and refer to plaintiff's Amended Complaint and to the said Affidavits of Mrs. Chas. W. Mapes, and also to said Affidavits of Gloria Mapes and H. R. Cooke.

Dated: August 31, 1946.

H. R. COOKE,

JOHN D. FURRH, JR.,

Attorneys for Defendants.



EXHIBIT B

In the District Court of the United States  
In and for the District of Nevada

P. G. DENSON,

Plaintiff,

vs.

IRENE GLADYS MAPES, also known as MRS.  
CHARLES W. MAPES, CHARLES W.  
MAPES, JR., GLORIA MAPES and CHAS.  
W. MAPES COMPANY, a Co-Partnership,  
Defendants.

SUPPLEMENTAL AFFIDAVIT OF MRS.  
CHAS. W. MAPES IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS  
AMENDED COMPLAINT, OF FOR SUM-  
MARY JUDGMENT

State of Nevada,  
County of Washoe—ss.

Mrs. Chas. W. Mapes, being first duly sworn,  
says: That she is one of the defendants named in  
the within entitled action and makes this affidavit  
on behalf of herself and her co-defendants:

That she has read the "Amended Complaint for  
Specific Performance" of plaintiff in the above-  
entitled action;

That referring to Paragraph VI of said Amended  
Complaint affiant denies that at her request the  
plaintiff engaged an architect and contractor now  
constructing said hotel building, and denies that

the architect and contractor now constructing said hotel building was engaged by the said plaintiff either with or without the request of said defendant; affiant also denies that [31] the plaintiff at the request of this affiant, or at all, secured a large and appreciable loan, or any loan whatsoever, for said defendants to finance said hotel construction, and denies that she ever informed plaintiff she was unable successfully to negotiate a loan through other channels.

With regard to the allegations of Paragraph VII of said Amended Complaint, affiant denies that within the knowledge of the defendants or any of them the plaintiff obtained specifications and prices of various firms as alleged in said paragraph, and denies that plaintiff, with the knowledge of defendants, sold at considerable financial sacrifice, or at all, an hotel of which he was the owner.

With reference to the allegations of Paragraph IX of said Amended Complaint this affiant denies the whole thereof.

Affiant also denies the allegations of Paragraph XI of said Amended Complaint.

Referring to the allegations of Paragraph XII of the said Amended Complaint affiant admits that no proposed formal lease was ever tendered plaintiff by defendants, and affiant denies all the remaining allegations of said paragraph.

Referring to the allegations of Paragraph XIV of said Amended Complaint affiant denies that de-

defendants' refusal to execute any lease to the plaintiff was without cause or reason, and denies that no cause or reason was given plaintiff for such refusal; affiant also denies the allegations of Paragraph XV of said Amended Complaint.

Referring to the allegations of Paragraph XVI of said Amended Complaint, affiant denies that it was at the special instance or request of this defendant that her son Charles W. Mapes, Jr., be associated with plaintiff as a second party to [32] said agreement of September 24, 1945, and as to whether plaintiff reposed sufficient or any faith and confidence in the said Charles W. Mapes, Jr., as alleged, affiant is without information or knowledge sufficient to base a belief, and denies the remaining allegations of said paragraph.

MRS. CHAS. W. MAPES.

Subscribed and sworn to before me this 31st day of July, 1946.

[Seal]

B. C. YPARRAGUIRRE,  
Notary Public. [33]

On application of defendants' attorneys

It Is Ordered that the time of hearing the foregoing Motion is hereby set for Sept. 11, 1946, at the hour of 2:00 o'clock p.m. at the Federal Building, at Reno, Nevada; and

Further Ordered that a copy of the foregoing, with the Affidavit, Exhibit B referred to, be served

upon plaintiff at least 20 days before said hearing date.

Dated: August 1, 1946.

ROGER T. FOLEY,  
District Judge.

Service, by copy, of the foregoing Notice of Motion, together with Exhibit B attached thereto, and the Order of Court, admitted this 1st day of August, 1946.

PLATT & SINAI,  
Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 2, 1946. [34]

---

[Title of District Court and Cause.]

ANSWER TO PLAINTIFF'S AMENDED COMPLAINT FOR SPECIFIC PERFORMANCE

Come now the above-named defendants and file this their Answer to the Amended Complaint, and admit, deny and allege as follows:

I.

Answering the allegations of Paragraph I of said Amended Complaint, the defendants admit the same, except that defendants deny that said defendant Charles W. Mapes, Jr., has conspired or confederated with the said defendant Irene Gladys Mapes or with the defendant Gloria Mapes or with the defendant co-partnership, or with anyone whom-

soever to defeat the said plaintiff out of his just rights or equities herein or for any purpose whatsoever. [35]

## II.

Answering the allegations of Paragraph II of said Amended Complaint, the defendants admit the same.

## III.

Answering the allegations of Paragraph III of said Amended Complaint, the defendants admit the same, except that defendants deny that said defendant Irene Gladys Mapes was the owner of 167.64 feet frontage on Virginia street as alleged, and deny said defendant owned to exceed 155.64 feet frontage on said Virginia street.

## IV.

Answering the allegations of Paragraph IV of said Amended Complaint, the defendants admit the same, except that said defendants deny that the conveyance mentioned in said Paragraph IV, at the time of its execution or prior thereto, was made with knowledge by all of the defendants of the existence of said agreement of September 24, 1945, identified as Exhibit A; deny that the defendant Gloria Mapes had any knowledge of the existence of said agreement any time prior to November 6, 1945.

## V.

Answering the allegations of Paragraph V of said Amended Complaint, the defendants deny that on or about September 24, 1945, or at any time, the

defendant Irene Gladys Mapes, also known as Mrs. Chas. W. Mapes, and Charles W. Mapes, Jr., entered into a written or any agreement whereby the above-named defendant Irene Gladys Mapes agreed to grant a lease to the said plaintiff and to the said defendant Charles W. Mapes, Jr.; deny that the said plaintiff and the said defendant Charles W. Mapes, Jr., agreed to receive a lease from the said defendant Irene Gladys Mapes of a certain new fire proof hotel, apartment, store building or garage [36] to be erected by said defendant Irene Gladys Mapes on the lands described; deny that said agreement Exhibit A is certain, or definite or just or reasonable or mutual in its obligations or in all its material parts.

## VI.

Answering the allegations of Paragraph VI of said Amended Complaint, the defendants deny that at the request of the defendant Irene Gladys Mapes, the plaintiff engaged the architect and/or contractor now constructing the hotel building on said premises; as to whether the plaintiff conferred upon many or any occasions with the said architect, or with the contractor employed on the work, or with members of their official staffs, or as to whether plaintiff expended the necessary or any time or expense for attendance upon said conferences, the defendants are without knowledge or information sufficient to form a belief as to the truth of said averments.

And defendants deny that said plaintiff conferred



upon many occasions or at all with the defendants or any of them, except informally and on a few occasions with the defendants Mrs. Chas. W. Mapes and Charles W. Mapes, Jr.; deny that the said plaintiff, either with or without the request of the defendant Irene Gladys Mapes, secured a large or appreciable loan for the said defendants to finance the construction of the said hotel building and deny that the defendant Irene Gladys Mapes ever informed plaintiff she was unable to successfully negotiate the loan referred to through other channels.

## VII.

Answering the allegations of Paragraph VII of said Amended Complaint, the defendants aver they are without knowledge or information sufficient to form a belief respecting the same, [37] except that defendants deny that the alleged good and valuable considerations in said agreement provided and as alleged in said Amended Complaint, were or are fair, just or equitable to the defendants herein or any of them.

## VIII.

Answering the allegations of Paragraph VIII of said Amended Complaint, the defendants deny that said Agreement Exhibit A was prepared by the attorney for the defendants, except that defendants admit that their attorney copied from a type-written document furnished him by the plaintiff and in making such copy or redraft said attorney merely

changed the wording to more nearly conform to legal phraseology, and except further that with the precedent approval of plaintiff and defendants Mrs. Chas. W. Mapes and Charles W. Mapes, Jr., said attorney added Paragraph 10 thereto; deny that said Exhibit A after being signed by plaintiff was promptly or at all returned by mail to the attorney for said defendants; that as to whether since the execution of said Exhibit A the plaintiff has always or at all been ready or willing to receive from the defendant Irene Gladys Mapes a lease of the said hotel structure whenever tendered, or to join in the execution of such a lease, the defendants are without knowledge or information sufficient to form a belief; deny that defendants have been informed or advised by plaintiff as to his alleged readiness and willingness.

## IX.

Answering the allegations of Paragraph IX of said Amended Complaint, the defendants deny that they or any of them by word, or by act or by any conduct, or in any manner whatsoever on the part of the said defendants or any of them, have waived the provisions of said Exhibit A respecting said requirement that the [38] parties thereto should immediately enter into a discussion with each other as to the terms, conditions and details of said lease and the requirement that a lease should be given by the defendant Irene Gladys Mapes to the plaintiff and the said Charles W. Mapes, Jr., provided that the terms, conditions and details of said lease



could be mutually agreed upon between the parties thereto within 10 days after the actual construction of the hotel building had been commenced; deny that said defendants, in the manner alleged, or at all, had intentions to waive said requirements or that defendants had knowledge, understanding or recognition of the alleged or any waiver; deny that said defendants or any of them are estopped or foreclosed from disclaiming the alleged or any waiver, or from asserting or claiming, or relying upon, the said provisions in Exhibit A or any of them; deny that since the execution of said agreement, or for a continuous or other period following the expiration of the said time provisions, the defendants by words or acts or conduct led plaintiff to believe that such a lease would be tendered and would be properly executed by all or any of the parties thereto or hereto; deny that plaintiff placed full or any reliance on defendants' alleged word, acts or conduct; deny that almost continuously or otherwise from September 24, 1945, up to and including April 1, 1946, all or any of the parties to the said suit conferred at various times and intervals, except informally and on a few occasions; deny that all of the parties hereto at all or any of the times since September 24, 1945, to April 1, 1946, have treated or considered said Exhibit A in continuous full force and effect or of any force or effect, except that the defendants Mrs. Chas. W. Mapes and Charles W. Mapes, Jr., did not declare any refusal to proceed further under said Exhibit A until on or about April 1, 1946, and finally on

April 10, 1946, [39] when defendant Mrs. Chas. W. Mapes was notified by the said Charles W. Mapes, Jr., that he would not sign the proposed lease with said plaintiff as co-lessee; defendants are without knowledge or information sufficient to form a belief as to whether plaintiff believed from September 24, 1945, up to and including April 1, 1946, that defendants would tender or execute said lease; deny that the alleged or any representations were made by defendants to the effect that they were acting in good faith; deny that on or about December 28, 1945, at the request of the defendants or any of them, the plaintiff met the defendant Charles W. Mapes, Jr., at the office of the architect of said hotel building at Oakland for the purpose of discussing some changes in the plans for said building, or for any purpose whatsoever; deny that during the month of March, 1946, plaintiff conversed by phone between Los Angeles, California, and Reno, with the defendant Irene Gladys Mapes about the hotel or the plans therefor; deny that at said time plaintiff told the defendant Irene Gladys Mapes that he would call the defendant Charles W. Mapes, Jr., the next day and ask him to come to Los Angeles to look over plans for furniture and interior decorating; admit that by appointment between plaintiff and Charles W. Mapes, Jr., plaintiff met defendant Charles W. Mapes, Jr., on or about April 1, 1946, together with an interior decorator of Barker Bros., Los Angeles, California, at the office of the architect of said hotel structure at Oakland, California;

That as to whether the plaintiff in the first part of January, 1946, went to San Francisco and interviewed the Dohrmann Hotel Supply Company or instructed said Company to get out plans for new equipment, designs and prices for dining rooms, kitchens, bars and other matters appertaining to hotel equipment, defendants have no knowledge or information sufficient to form a belief; [40] deny that these defendants well or otherwise knew of plaintiff's alleged interview with said Dohrmann Hotel Supply Company, and except as above stated, the defendants deny the allegations of said Paragraph IX.

X.

Answering the allegations of Paragraph X of said Amended Complaint, the defendants deny that during the period or time from September 24, 1945, up to and including about the 10th day of April, 1946, the said defendants or any of them retained plaintiff's \$10,000.00 cash deposit, but admit that said cash deposit was retained from October 4, 1945, the date same was received by defendant Mrs. Chas. W. Mapes, until shortly after April 1, 1946, when the said defendant tendered the return of said \$10,000.00 to the plaintiff; deny that during the period of time from September 24, 1945, to about April 10, 1946, the defendants by word, or act or conduct led plaintiff to believe that they would proceed further or at all under said Exhibit A.

## XI.

Answering the allegations of Paragraph XI of said Amended Complaint, the defendants deny that in further or any recognition of the alleged waiver by defendants of said time element and the alleged estoppel, the defendants caused to be published in local newspapers or trade journals, featured or prominent illustrated articles stating that plaintiff would conduct and operate said hotel.

## XII.

Answering the allegations of Paragraph XII of said Amended Complaint, the defendants deny that the alleged lack of observance or performance of the time elements of said agreement referred to was the fault of the defendants or any of them; deny that at any time prior to on or about March 18, 1946, the plaintiff told defendants he was ready to sign a lease whenever they should prepare and submit it; admit that no form of lease was ever tendered plaintiff by the defendants or any of them; deny that defendants had superior knowledge as to when final plans for said hotel structure were completed; deny that defendants had superior knowledge as to when actual construction commenced; deny that no interview with plaintiff was sought by defendants for the final preparation of the lease; deny that said defendant are or that any of them is or were at fault or were neglectful or delinquent in not seeking or arranging such an interview or conference with plaintiff within the periods of time set forth in said Exhibit A.

## XIII.

Answering the allegations of Paragraph XIII of said Amended Complaint, the defendants deny that all the material or essential provisions of the proposed lease were or are expressly stated and set forth in said Exhibit A; deny that said Exhibit A contains all material or essential provisions, and deny that the parties agreed to that effect; deny that all other matters and things usually contained in similar leases would be merely incidental or in accordance with custom and usage, and deny that there exists any applicable custom or usage.

## XIV.

Answering the allegations of Paragraph XIV of said Amended Complain, the defendants deny that notwithstanding the alleged continued acts, conduct or representations of defendants as therein alleged, the defendants personally or through their attorney on or about April 10, 1946, either with or without cause or reason, repudiated the said Exhibit A alleged agreement; deny [42] that said alleged agreement contained any binding lease obligations; deny that at any time after the expiration of ten days from January 25, 1946, date when actual construction of hotel building commenced, said Exhibit A was of any legal or binding force whatever; deny that no cause or reason was given plaintiff for defendants' refusal to proceed further with said Exhibit A.



## XV.

Answering the allegations of Paragraph XV of said Amended Complaint, the defendants deny that plaintiff has fully or faithfully performed all or any acts or things, covenants or conditions in said agreement required of him to be performed; deny that plaintiff has always been ready, or willing, or able, or is now ready, or willing, or able, to enter into or execute said lease as in said Exhibit A provided; deny that plaintiff always has been or is ready, willing or able to comply with all or any of the terms, covenants, agreements or conditions of said Exhibit A.

## XVI.

Answering the allegations of Paragraph XVI of said Amended Complaint, the defendants deny that it was at the special instance or request of the defendant Irene Gladys Mapes that her son Charles W. Mapes, Jr., was associated with plaintiff as a second party to said alleged agreement Exhibit A; as to whether plaintiff reposed sufficient or any faith or confidence in the said Charles W. Mapes, Jr., to believe that he would faithfully or otherwise carry out his obligations under said Exhibit A, or that he would join with plaintiff in demanding and executing the lease as in said alleged agreement provided, the defendants are without knowledge or information sufficient to form a belief; deny that the said [43] defendant Charles W. Mapes, Jr., has wrongfully, unjustly or inequitably, or in fraud of plaintiff's rights, or otherwise, or at all, conspired



or confederated with his co-defendants, or either of them, in repudiation of said alleged agreement; deny that plaintiff has always or at all been ready, willing or able, or is now ready, willing or able personally to assume, pay or perform in full all obligations, acts or things required to be performed by the defendant Charles W. Mapes, Jr., under said alleged agreement or lease; deny that said plaintiff is willing or able to take or execute said lease in his own name.

### XVII.

Answering the allegations of Paragraph XVII of said Amended Complaint, the defendants deny the same.

### XVIII.

Answering the allegations of Paragraph XVIII of said Amended Complaint, the defendants deny the same.

For a further answer and first defense, the defendants allege and show:

### I.

That on November 6, 1945, the defendant Mrs. Chas. W. Mapes, as grantor, executed and delivered a grant, bargain and sale deed of conveyance to defendants Charles W. Mapes, Jr., and Gloria Mapes as grantees, conveying to each of said grantees an undivided one-third interest in the property commonly known as the old Post Office Site situate on the southeast corner of First and Virginia streets,

Reno, Nevada; that said Gloria Mapes paid for her undivided [44] one-third interest in said property so conveyed to her the sum of \$50,041.67; that said purchase was made as aforesaid in good faith by said defendant Gloria Mapes and said purchase price was paid without any knowledge or notice on the part of the said defendant Gloria Mapes of the existence of the alleged agreement dated September 24, 1945, a copy of which is annexed to plaintiff's Complaint herein and marked Exhibit A; that the said defendant Gloria Mapes had no knowledge or notice of the existence of the said Exhibit A document and transaction therein mentioned until long after November 6, 1945, the date of the purchase of said one-third interest by her as aforesaid.

For a further answer and second defense, the defendants allege and show:

I.

That as provided for in said Exhibit A, plans and specifications were to be prepared and then approved in writing by the plaintiff and by the defendants Irene Gladys Mapes and Charles W. Mapes, Jr., before any lease on said premises should become effective, and that within 10 days after the actual construction of said hotel building had been commenced, a written lease for all of said structure when completed, with the exceptions in said Exhibit A mentioned, should be entered into provided that the terms, conditions and details of said lease could be mutually agreed upon between the parties

to said Exhibit A; that the defendants Mrs. Chas. W. Mapes and Charles W. Mapes, Jr., at all times since September 24, 1945, and particularly at the time of commencement of construction of said hotel building and for 10 days and [45] more thereafter, were in Reno where for many years they have resided; that defendants repeatedly requested said plaintiff to meet with them and conclude the lease transaction; that said plaintiff did not reside in Reno and only made occasional and short visits and for the period of 10 days and more, to-wit: for several months, more or less, said plaintiff was not in Reno or in any event did not personally contact the defendants, as a result of which the details of said proposed lease were not discussed by the parties as provided for in said Exhibit A, or at all.

For a further answer and third defense, the defendants allege and show:

I.

That as appears therefrom, said Exhibit A was intended by the parties thereto to be merely a preliminary memorandum of some of the basic things to be incorporated in the lease if and when details of same were agreed upon, and that said lease should contain all necessary provisions to fully effectuate the intention and purpose of said preliminary agreement, and also to definitely set forth all usual and necessary conditions to the end that the rights and interests of each party should be conserved and protected, and defendants here aver

and specify, as some of the necessary conditions for the protection of the rights of the parties, the following:

1. Non-assignability of the lease by lessees, or by either of them, without the written consent of the lessor.

2. Interest of the lessees not to be transferable or pass in case of death, bankruptcy, receivership or pass by operation of law in any manner. [46]

3. Inasmuch as lease rentals are upon a percentage basis of gross proceeds of lessees' business, the lease should require lessees to keep true books of account and give lessor right of free inspection and audit.

4. A clause clarifying and particularizing Paragraph 9 of Exhibit A as to what amount proposed lease should require for taxes; what amount for upkeep on the building; what amount for insurance on the building; what amount of "borrowed money," and what rate of interest should be applied; what amount payable annually for amortization of cost of building.

5. A clause clarifying Paragraph 4 of Exhibit A as to what should constitute suitable, proper and necessary fixtures and equipment, and whom, if anyone, shall have power of determining in case the parties are unable to agree.

6. Clause clarifying Paragraph 5 of Exhibit A in respect of either including or excluding the

garage and if excluded and lessor leases same to some third person, upon what terms and charges the lessees should have privilege of garage service for their guests.

7. Clause clarifying Paragraphs 7, 8 and 9 of said Exhibit A as to the terms of the chattel mortgage to be given as security for the rental payments, and how condition same as security for the rental payments provided for by the percentage clause of Exhibit A, and how condition same as security for the guaranteed minimum provided for by Paragraph 9 covering taxes, upkeep, insurance, interest on borrowed money and amortization—the amount of at least some of the items being impossible to ascertain in advance of the time said proposed lease was to be made. [47]

8. Consequences of lessees' noncompliance with the terms of the lease, whether giving lessor right to terminate with or without notice, and if the former, what kind of notice.

9. Lessees to comply with all laws of the state and with local ordinances, statutes and regulations.

10. Lessees to indemnify lessor against damage to lessor or other tenants, resulting from overflow or breakage of water or sewer pipes or damage from leakage.

11. Lessor not to be liable for damages caused lessees by reason of any acts of other tenants of the building.

12. Lessees' failure to promptly pay charges of



public utilities as to leased part of the building and consequence of such failure as constituting default.

13. Lessees to keep leased premises in repair and whether or not additions or improvements made by lessees are to remain on the property at the end of the term.

14. Lessees to allow the usual "For Rent" signs to be posted by lessor for some period next prior to termination of the lease.

For a further answer and fourth defense, the defendants allege and show:

#### I.

(a) That on September 24, 1945, it was contemplated and intended by all parties to said Exhibit A that plans of the proposed hotel structure, together with specifications for same, prepared by the Moorehead Company should be annexed to said Exhibit A [48] and be approved in writing by the parties thereto within the time limited; that no copy of any plans or of specifications were ever annexed to said Exhibit A and approved in writing by the parties; that on or about November 26th; again on or about December 12th and December 27, 1945; and on or about January 25th and March 9, 1946, the defendant Mrs. Chas. W. Mapes requested plaintiff to meet with said defendant and defendant Charles W. Mapes, Jr., for considering and approving such plans and specifications and of discussing terms of the proposed lease; that said hotel structure was to plaintiff's knowledge commenced on or



about January 25, 1946; that said plaintiff neglected, failed and refused to meet with said defendants;

(b) That the \$20,000.00 cash required by Paragraph 1 of said Exhibit A to be deposited by said Charles W. Mapes, Jr., and plaintiff P. G. Denson as a guarantee of their good faith, was not deposited contemporaneously with the making of said Exhibit A, or at all, except that \$10,000.00 was deposited on or about October 4, 1945, but the remaining \$10,000.00 has never been deposited or tendered to said defendant Mrs. Chas. W. Mapes.

(c) That about six years prior to September 24, 1945, said plaintiff proposed to defendant Mrs. Chas. W. Mapes that she construct an hotel on said lot referred to in Exhibit A and then lease said hotel to him, the said plaintiff, which proposal was promptly rejected by said Mrs. Chas. W. Mapes on the ground as then stated to said plaintiff that said lot had been acquired for the purpose of erecting thereon an hotel building to be leased exclusively to her son, the said Charles W. Mapes, Jr., together with such associates, if any, as he might consider; that shortly prior to said September 24, 1945, said plaintiff renewed said subject by urging said defendant Mrs. Chas. W. Mapes that he, the plaintiff, be considered in a lease that was to be granted to the said Charles W. Mapes, Jr., on said hotel, the plaintiff representing [49] himself to be an experienced and capable hotel man and able to guide defendant's said son in such a venture; that said

lease was to be given to said Charles W. Mapes, Jr., who, because of the said alleged experience and ability of said plaintiff, would consider the plaintiff being associated with him as a co-lessee; that said plaintiff insistently urged the foregoing upon said defendant Mrs. Chas. W. Mapes; that said Charles W. Mapes, Jr., was at the time in the Armed Forces and was unable to attend upon all conferences; that the proposed association was discussed between said Charles W. Mapes, Jr., and plaintiff upon the basis of 30% of net earnings to plaintiff and 70% to said Charles W. Mapes, Jr.; that said plaintiff was insistently urging said defendant Mrs. Chas. W. Mapes to sign some sort of a memo of some of the items to go into the proposed lease as he wanted to have such writing to "show"; whereupon plaintiff submitted a typewritten form of preliminary memo to the said defendant and, after consideration and agreeing in the main thereto, the plaintiff, Charles W. Mapes, Jr., and Mrs. Chas. W. Mapes then repaired to the office of said defendants' attorney and the latter, after discussing several changes, re-drafted said preliminary agreement and the same was later signed by the parties thereto; that said defendant Mrs. Chas. W. Mapes believed and relied upon the said representations of said plaintiff and would not otherwise have considered granting a lease where plaintiff was to have an interest; that on or about April 1, 1946, the plaintiff and defendant Charles W. Mapes, Jr., had a meeting regarding terms of the proposed leasing association whereat being unable to agree, the said

Charles W. Mapes, Jr., informed the plaintiff he would not proceed further with the proposed venture; whereupon plaintiff stated in effect that he held a contract for a lease and would compel recognition of himself alone, [50] if necessary, as the lessee and manager; that said defendant Charles W. Mapes, Jr., in an endeavor to reach an agreement as to said lease, as well as to the association of plaintiff in the conduct of said hotel, invited plaintiff to come to Reno for a conference; that plaintiff came to Reno on or about April 10, 1946, and a conference was held, but said plaintiff repeated his claim to having a contract for a lease which he could and would enforce and the conference abruptly terminated; that thereupon said Charles W. Mapes, Jr., advised the defendant Mrs. Chas. W. Mapes of the foregoing and that he would not sign any lease with the plaintiff as co-lessee; that plaintiff had previous notice to that effect; whereupon said defendant Mrs. Chas. W. Mapes notified said plaintiff she would return the \$10,000.00 deposited as aforesaid; that the defendant Charles W. Mapes, Jr., agreed to said proposal for the return of said \$10,000.00 and tender of same was made promptly after said April 10, 1946; that said plaintiff refused and continues to refuse to accept or permit a return of said \$10,000.00 and insists upon the right asserted by him to secure a 20-year lease upon said hotel structure to himself and said Charles W. Mapes, Jr., as co-lessee, or to himself alone, if the said Charles W. Mapes, Jr., refuses to join as a co-lessee.

For a further answer and fifth defense, the defendants allege:

I.

That substantially, the only reason, as plaintiff well knew, for defendant Mrs. Chas. W. Mapes signing said Exhibit A was as stated in subsection (c) of the fourth defense, here referred [51] to and made a part hereof; that at all times subsequent to September 24, 1945, and prior to April 10, 1946, said defendants were willing, irrespective of said Exhibit A, to meet with and endeavor to agree upon the terms of a 20-year lease to said Charles W. Mapes, Jr., and the plaintiff, and said Charles W. Mapes, Jr., was likewise willing to meet with plaintiff and endeavor to agree upon the terms on which they would operate said hotel; that on or about April 10, 1946, said Charles W. Mapes, Jr., had a further conference with plaintiff in Reno in an endeavor to agree relative to their proposed hotel operation, at which plaintiff, among other things, insisted upon a wholly unfair sharing of proceeds and of management; that plaintiff, among other things, asserted that he had a contract (referring to Exhibit A) binding upon defendant Mrs. Chas. W. Mapes, which he proposed to enforce regardless of whether said Charles W. Mapes, Jr., joined as a co-party; that defendant Charles W. Mapes, Jr., then notified plaintiff that because of the latter's said unfair and unacceptable demands, he, the said Mapes, Jr., would proceed no further regarding the subject matter of said Exhibit A and would not

sign any lease or agreement whatsoever with plaintiff as a co-party; that said Charles W. Mapes, Jr., thereupon notified defendant Mrs. Chas. W. Mapes that he would not sign the proposed or any lease with said plaintiff as co-lessee; that thereupon the defendant Mrs. Chas. W. Mapes, with the approval of said defendant Charles W. Mapes, Jr., notified plaintiff that she would return said \$10,000.00 and tender thereof was duly made shortly after said April 10, 1946, but plaintiff refused and continues to refuse to accept or permit a return of said \$10,000.00 and to insist upon a 20-year lease upon said hotel structure to himself and said Charles W. Mapes, Jr., or to himself alone if the said Charles W. Mapes, Jr., refuses to join as co-lessee. [52]

For a further answer and sixth defense, the defendants allege and show:

I.

That under the proposed rental terms mentioned in Paragraph 5 of said Exhibit A, the total guaranteed rental on a 20-year lease, to be paid to the owner of said hotel building, when completed, not including the 8 store spaces on Virginia street and 3 store spaces on First street, would, as nearly as defendants are able to state, approximate \$9000.00 per month;

That under the proposed guarantee of Paragraph 9 of said Exhibit A, the rental income from the entire building, the amount sufficient to cover payments required for taxes, upkeep, insurance, interest on borrowed money, and to amortize the cost of



said building within said proposed 20-year lease period, would, as nearly as defendants are able to state, approximate \$10,000.00 per month;

That the fair and reasonable net rental for said premises under the same conditions as to time, not including the said 8 store spaces on Virginia street and 3 store spaces on First street, would be not less than \$25,000.00 per month, and inclusive of said store spaces, the fair and reasonable net rental would be not less than \$30,000.00 per month.

## II.

That as defendants are informed and believe and so allege the fact to be, the cost of placing in said hotel structure such furniture, fixtures and equipment as should be suitable, proper and necessary to furnish and equip the same as a first class hotel and apartment building will be at least \$300,000.00, and not \$150,000.00 as mentioned in Paragraph 4 of said Exhibit A. [53]

Wherefore, defendants pray:

(a) That plaintiff take nothing by his Amended Complaint and action herein;

(b) That it be decreed that said Exhibit A is null and void and is not and never became a legal contract;

(c) That said plaintiff be ordered and decreed to deliver up said Exhibit A to the Clerk of this Court for complete cancellation thereof, and that said plaintiff be perpetually enjoined from making



or asserting any claim against said premises or against the defendants, or any of them, by reason of said Exhibit A;

(d) That defendants be awarded such further relief as the equities of the case may warrant and which to the court shall seem meet and proper.

H. R. COOKE,  
JOHN D. FURRH, JR.,  
Attorneys for Defendants.

Service, by copy, of the foregoing Answer to Amended Complaint admitted this 30th day of September, 1946.

PLATT & SINAI,  
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 1, 1946. [54]

---

[Title of District Court and Cause.]

Direct Interrogatories to be Propounded  
S. P. BARASH

1. Q. Please state your full name and place of residence.  
A. Sidney Phillip Barash, 2406 La Mesa Drive, Santa Monica, California.
2. Q. Are you acquainted with the plaintiff, P. G. Denson, and if so, how long have you known him?      A. About fifteen years.
3. Q. Are you acquainted with Gladys Irene Mapes, also known as Mrs. Charles W.

Mapes, and Charles W. Mapes, Jr., and Gloria Mapes, or either or any of them?

A. I met Mrs. C. W. Mapes in 1940. I do not know the others.

4. Q. If your answer to the previous question is in the affirmative, state when and where you met them or any or either of them.

A. I met Mrs. Mapes early in 1920.

5. Q. Please state whether or not you discussed the construction and operation of a hotel on the Mapes property, known as the old post office site on Virginia Street, in Reno, Nevada, with Mrs. Mapes [55] some time during February or March, 1940?

A. Yes.

6. Q. If your answer to the previous question is in the affirmative, please state who was with you at the time you discussed the matter of the construction and operation of a hotel on the property aforesaid.

A. Mr. P. G. Denson, Mr. Douglas Stone and Mr. Leon Huckens.

7. Q. If you have already testified that you had a conversation or conversations with Mrs. Mapes, please testify what the conversation or conversations were, to the best of your recollection.

A. Mr. Denson had plans for a hotel to be erected on the old post office site and I was requested to advise all the parties con-

cerned regarding the possibility of securing a mortgage loan on the new development as well as the terms of such a loan.

8. Q. Please state why you went to Reno at that time and at whose request.

A. At Mr. Denson's request, see "7" for reasons.

9. Q. Please state whether or not Mr. P. G. Denson had any conversation or conversations with Mrs. Mapes regarding the construction, operation, and financing of said proposed hotel.           A. Yes.

10. Q. If your answer to the previous question is in the affirmative, please state what said conversation or conversations consisted of, when and where they took place, and who was present.

A. The meeting took place at Mrs. Mapes' home. The parties present and the subject of the conversation is covered in "6" and "7".

11. Q. If negotiations were carried on in respect to the construction, operation, and financing of said proposed hotel, please state the conversations relating thereto, or, if you cannot remember the conversations, please state the substance of said conversations and particularly the conversations or substance of conversations relating to the possible leasing and operation of that hotel by P. G. Denson, if such was the case.

- A. Mr. Denson proposed to lease the hotel, on a percentage lease and the discussion was mostly about the size, number of rooms and estimated cost of the building.
12. Q. If negotiations continued for the construction, operation, and financing of said proposed hotel, please state how long said negotiations continued and the reason for the termination of said negotiations, if you know.
- A. This was the only meeting I attended.
13. Q. Please state how many times you came to Reno to discuss said proposed hotel with Mrs. Mapes and also state if you know how many times Mr. P. G. Denson called upon Mrs. Mapes and how many times Mr. Douglas Stone and Mr. L. W. Huckins called upon Mrs. Mapes in Reno, Nevada.
- A. I called only once. I have no way of knowing how many times the other parties went to Reno or met Mrs. Mapes.
14. Q. Please state of your own knowledge whether or not Douglas Stone, the architect, prepared any drawings, pictures, and plans for Mrs. Mapes some time about March, 1940.
- A. He had some sketches with him at this meeting described above.
15. Q. If the said Douglas Stone did prepare drawings, pictures, and plans, please state

if said drawings, pictures and plans were submitted to Mrs. Mapes for her approval.

A. Yes.

16. Q. Please state whether or not the name of the proposed hotel was designated on said drawings prepared by Douglas Stone and if so, what the name was.

A. I don't know.

17. Q. Please state how long you have known Mr. P. G. Denson, the plaintiff in this case.

A. About fifteen years.

18. Q. Have you ever had any business dealings with P. G. Denson in respect to hotels?

A. Yes.

19. Q. Please state your opinion of P. G. Denson as a successful hotel operator and give the basis for your answer.

A. Mr. Denson is a competent and capable hotel operator. He was successful in all his hotel operations.

20. Q. Do you consider the terms of a proposed lease as set out in Exhibit "A" attached to these direct interrogatories just, fair, and equitable to the Lessor and if so, state why?

A. Yes they are fair and are more generous than I would offer. I think 25% of room gross is ample and 3% of food gross is ample where tenant is supplying the equipment and furniture. The minimum guaran-

tee as covered by clause "9" in the agreement is larger than I would personally agree to.

21. Q. Please state whether or not you have been or are connected with the operation or management of a hotel or hotels.

A. Only as a consultant and expert.

22. Q. If your answer to the previous question is to the effect that you have been, or now are, an operator or connected with the management of a hotel or hotels, please give the names and locations of the hotel or hotels or periods of time you have been so engaged.

A. Have been consultant in hotel operations on the Pacific Coast for 30 years.

23. Q. Please state your experience, if any, as the lessee of a hotel or hotels, giving the names of said hotel or hotels, if any, and the period of time you acted as lessee.

A. Same as above.

/s/ S. P. BARASH. [57]

State of California,

City and County of San Francisco—ss.

On this 3rd day of December, in the year One Thousand Nine Hundred and Forty-six, before me, Margaret M. Lynch, a Notary Public, in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and



6. Q. Are you acquainted with the reputation of the plaintiff, P. G. Denson, as to his integrity and his capabilities as a hotel man and manager, and with his financial responsibilities?

A. In regard to Mr. Denson's reputation as a hotel man, will say that he is far above the average—very efficient and a practical business man, also knows how to meet the public, a good mixer with his guests and makes friends. Has the ability of selecting capable men for his assistants, pays top salaries and always has an excellent chef and serves the very best of foods.

Regarding his character—Mr. Denson has a very lovable disposition and is a man of fine character—prince of a fellow; born in Georgia, is a real Southerner, and I venture to say has more sincere friends than any other hotel man in California.

Mr. Denson's reputation is A-1 and as to his integrity, his word is as good as his bond.

His financial condition in 1940 was more than ample to furnish the hotel and now, in 1946, I know he is financially able to carry out all obligations in regard to his contract with Mrs. Mapes; in fact, he can furnish the entire hotel and in my judgment Reno is lucky in securing a man like Mr. Denson. Mr. Denson is capable and should have complete charge of all man-

agement; in other words, he is an excellent and efficient operator and if it could be arranged it would simplify matters to have only one manager.

7. Q. If your answer to the last question be in the affirmative, please state what his reputation in this respect is and upon what do you base it. Please answer with as much detail as possible.
- A. Question No. 7 has been fully answered in my answer to question No. 6—as stated above, I have known Mr. Denson for 18 years—so feel that I am qualified to state the above facts.

/s/ LEON HUCKINS.

The State of Texas,  
County of Dallas—ss.

I, Margaret Joy Smith, a Notary Public in and for Dallas County, Texas, do hereby certify that the foregoing answers of Leon Huckins, the witness before named, were made, reduced to writing and read over to the witness in the due order of such interrogatories and cross-interrogatories, and were then signed and sworn to by the witness before me.

Given under my hand and seal of office this 5th day of December, A.D. 1946.

[Seal] /s/ MARGARET JOY SMITH,  
Notary Public in and for  
Dallas County, Texas.

[Endorsed]: Filed Dec. 13, 1946. [67]

words, we had 100 cent dollars for construction.

I managed the Sir Francis Drake from 1928 to 1938 (10 years) and in 1938 the Huckins interest sold out to the Hilton Hotel Co. [65]

3. Q. Are you acquainted with the plaintiff in the action, P. G. Denson, and if so, how long have you known him?

A. Yes, I am acquainted with Mr. P. G. Denson; have known him for about 18 years.

4. Q. State whether you visited in company with the plaintiff, P. G. Denson, Mrs. Irene Gladys Mapes of Reno, Nevada, one of the above named defendants, and if so, when, where and upon how many occasions?

A. Yes—in 1940 with Mr. Denson I made six or eight trips to Reno and discussed with Mrs. Mapes the building of a hotel on the old Post Office site.

Mr. Denson and I suggested plans for all floors and it is rather singular that our plans are practically the same as the present plans—that is, we located stores on the two streets—lobby in rear of stores and Coffee Shop adjacent to lobby near river.

We suggested having some apartments in addition to hotel rooms and the top floor for catering, gaming, etc.

We secured the services of Douglas Stone, a prominent S. F. architect. Mr. Stone drew several floor plans and exterior

elevations and we made two or three trips to Reno with Mr. Stone to discuss plans, etc., with Mrs. Mapes.

We also discussed with Mrs. Mapes the financing of the hotel. It was understood Denson and Huckins were to lease the entire building with the exception of the stores, also we were to furnish the hotel and give chattle mortgage on furniture to secure our lease.

Mrs. Mapes made one or two trips to S. F. to discuss project with us.

We were financially able to furnish hotel unincumbered and we also spent considerable time and money on the Reno project; all this was in the year 1940—the hotel was to be leased to Denson and Huckins, each owning 50% of corporation.

5. Q. Please state who were present at these visits or interviews, and what as nearly as you recall, with as much detail as possible, was said by any and all of them.
- A. Most of the question has been answered in question 4. Mrs. Mapes, Mr. Denson and I were present at all meetings, and Mr. Stone was present at two or three conferences.

Mrs. Mapes seemed quite anxious to lease hotel to us, but was not satisfied with Mr. Stone's plans—yet, her present architect is using practically the same layout of stores, public rooms, bedrooms, apartments and sky room, etc.

garage receipts, or, if the first party leases the garage to a third person, the second parties are to have the privilege of garage service for their guests on terms to be mutually agreed upon.

6. That said lease shall provide that the second parties are to execute and deliver to the first party a first chattel mortgage covering the furniture, fixtures and equipment placed in the hotel and apartments as aforesaid, to secure the rental payments as provided in said lease.

7. That after said lease is executed between the parties hereto and if the second parties fail either to provide and place said furniture, fixtures and equipment in said hotel rooms and apartments as aforesaid, or if they fail to execute and deliver said chattel mortgage as such security as herein required, then the cash so deposited with the first party shall belong absolutely to the first party as a consideration for her entering into this agreement.

8. If after said lease is executed between the parties hereto as above provided, and the second parties provide and place said [60] furniture, fixtures and equipment in said hotel and apartments as aforesaid, and the second parties execute and deliver said chattel mortgage as security as herein required, then the cash so deposited with the first party shall belong to and be delivered to said second parties by the first party.

9. The second parties as a part of said lease, will guarantee to said first party that the total annual

income from the entire building which the first party will receive will be in an amount at least sufficient to cover payments required of the first party for taxes, upkeep, insurance, interest on borrowed money, and to amortize the cost of said building within said lease period.

10. The said lease shall contain all necessary provisions to fully effectuate the intent and purposes of the parties hereto as stated in this preliminary agreement and also to definitely set forth all usual or necessary conditions to the end that the rights and interests of each party shall be properly conserved and protected.

11. Time is of the essence of each and every term, covenant and agreement herein mentioned.

In Witness Whereof, the parties hereto have hereunto set their hands, the day and year first above written.

IRENE GLADYS MAPES.

Witnesses to the signature of First Party:

B. C. YPARRAGUIRRE,

H. R. COOKE.

CHARLES W. MAPES, JR.,

P. G. DENSON,

Second Parties.

Witnesses to the signature of Charles W. Mapes, Jr.:

H. R. COOKE.

Witnesses to the signature of P. G. Denson:

H. R. COOKE. [61]



Cross-Interrogatories to Be Propounded to S. P.  
Barash, a Witness on the Part of Plaintiff

1. Q. If you answer Direct Interrogatory No. 20 in the affirmative, by stating that the proposed lease is just, fair and equitable to the lessor, what value did you assume for the lot or land upon which the hotel building is situate?

A. Mrs. Mapes stated in 1940 the land was worth \$300,000. The ground floor income would bear this out.

2. Q. What amount did you assume as the income from the eleven store spaces excepted from the lease arrangement?

A. Mrs. Mapes stated in 1940 the stores would readily rent for \$30 per front foot. If that was correct their present value would be about \$50.

3. Q. What amount did you assume as necessary to cover interest on borrowed money?

A. 4% on \$700,000.

4. Q. What rate of interest did you assume on such borrowed money?

A. 4% on \$700,000.

5. Q. What amount did you assume to cover cost of insurance?

A. \$3,000 to \$5,000 per year.

6. Q. What amount did you assume to cover cost of upkeep?

A. \$1000 per year.

7. Q. What amount did you assume for payment of taxes?

A. \$20,000 to \$25,000 for real estate taxes.

8. Q. What amount did you assume as the total annual income from the entire building which the lessor would receive?

A. \$241,500.

9. Q. How many hotels haave you operated in Nevada—state the names, locations, length of time, and capacity you were connected therewith? A. None.

10. Q. What figure did you assume in your answer to Direct Interrogatory No. 20 for allocation to the premises to be leased for hotel purposes and what amount did you allocate to the eleven store spaces which were excepted from the lease agreement?

A. The hotel food and liquor should  
bring in .....\$181,500  
The stores should bring in. .... 60,000  

---

\$241,500

11. Q. The attached statement mentioned in said Direct Interrogatory No. 20 provides that if the percentage of gross receipts shall not equal monthly \$2083.88, then the second parties (lessees) shall make up and pay to the first party the deficiency on any of the four [62] classifications mentioned in said statement. In your answer to said direct

interrogatory, which of the two minimum rental provisions mentioned in said statement did you use in reaching your conclusion?

A. Neither. I don't think either minimum applies in view of the percentage rentals.

12. Q. If you answer Direct Interrogatory No. 20 to the effect that the proposed lease was just, fair, and equitable to the lessor, please state what figure you assumed as the size and capacity of the garage mentioned in paragraph 5 of the agreement?

A. Not considered.

13. Q. If you answer Direct Interrogatory No. 20 to the effect that rentals and other terms of the proposed lease are in your opinion just, fair and equitable to the lessor, please state what figure, terms, rental or other conditions you assumed the parties, plaintiff and defendants, should or would or ought to agree upon for the privilege of garage service for defendants' guests in case the garage was leased to a third person, as mentioned in paragraph 5 of said attached agreement?

A. Not considered as immaterial to total involved.

14. Q. What do you understand are the terms of the lease contemplated by the agreement referred to in Direct Interrogatory No. 20?

A. 20 year lease unfurnished based on 30% of

room gross, 10% of liquor gross, 5% of food gross.

15. Q. In answering Direct Interrogatory No. 20, do you understand that the terms of the lease contemplated by the agreement referred to in Direct Interrogatory No. 20 permitted the lessees to assign the lease or their interest therein without the consent of the lessor?

A. Not covered in agreement. Most leases have standard clauses on transfer which enable transfer to competent financially responsible hotel operator by owner's consent.

16. Q. In answering Direct Interrogatory No. 20, what did you assume the sky room in the proposed hotel was to be used for?

A. Food, liquor and dancing and other services of lawful nature.

17. Q. What figure did you assume in making said answer, as to the probable gross income from the operation of the sky room?

A. Not separated from total income as a separate operation.

18. Q. What figure did you assume as the net income from the sky room operations?

A. I am not trying to figure net income. The proposed lease was [63] based on gross income figures which were estimated by me.

/s/ S. P. BARASH.

State of California,  
City and County of San Francisco—ss.

On this 3rd day of December, in the year One Thousand Nine Hundred and Forty-six, before me, Margaret M. Lynch, a Notary Public, in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared S. P. Barash, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office, in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]                      MARGARET M. LYNCH,

Notary Public in and for the City and County of  
San Francisco, State of California.

[General]

My commission expires February 10, 1948.

[Endorsed]: Filed Dec. 13, 1946. [64]

[Title of District Court and Cause.]

Direct Interrogations to be propounded

LEON HUCKINS

A witness on behalf of Plaintiff.

1. Q. Please state your full name, present address and occupation or profession.

A. Leon Wood Huckins, Dallas, Texas, 4726 Coles Manor Place; retired from business.

2. Q. Have you ever been engaged in the hotel business, and if so, in what capacity. Please answer fully.

A. Yes—the four Huckins brothers have been in the hotel business all their lives and at one time owned or operated twelve hotels. Personally, I have managed the following hotels:

Huckins Hotel, Sedalia, Missouri.

Caddo Hotel, Shreveport, Louisiana.

Huckins Hotel, Oklahoma City, Oklahoma.

Westbrook Hotel, Fort Worth, Texas.

Sir Francis Drake Hotel, San Francisco, California.

I might add I purchased the property at the corner of Sutter and Powell Streets in S. F. in 1927, selected the architect and let building contract with Lindgren and Swinerton, who built the Sir Francis Drake, costing between 3 and 4 million dollars.

The above hotel was financed without any expense to the corporation. In other



other valuable and sufficient consideration present and received, the receipt whereof is hereby mutually acknowledged by the parties, that contemporaneously with the execution and delivery hereof, the second parties shall deposit with first party the sum of \$20,000.00 in cash as a guarantee of their good faith and by way of inducement for the first party to enter into this agreement.

2. That the first party agrees to complete said structure at said location subsequently, according to said completed and approved plans, and specifications to be prepared and approved, on or before January 1, 1947.

3. The parties hereto shall immediately enter into a discussion with each other as to the terms, conditions and details of said lease; that the period of said lease shall be not less than twenty (20) years from the date the premises are in condition for possession thereof to be delivered. The parties hereto agree that when such terms, conditions and details have been mutually agreed upon they shall immediately thereupon enter into a written lease with each other for all of said structure when completed, with the exceptions above noted; provided, that the terms, conditions and details of said lease can be mutually agreed upon between the parties hereto within 10 days after the written contract for the construction of said structure has been entered into by the first party and within 10 days after the actual construction has been commenced.

4. That said lease shall provide, among other

things, that as soon as the hotel, rooms and apartments in said structure are ready for occupancy by the second parties, the second parties will at their own cost, now estimated at \$150,000.00, provide and place in said structure such furniture, fixtures and equipment as shall be suitable, proper and necessary to furnish and equip the same as a first class hotel and apartment building. [59]

5. That the rental for said structure when completed, with the exceptions noted above, shall be as follows:

- 5% of gross receipts from food sales
- 10% of gross receipts from liquors, wines and beer sales.
- 30% of gross receipts from hotel, rooms and apartments.
- All rentals payable monthly.

Provided, that in the event the said percentage of gross receipts shall not equal monthly:

For coffee shop, dining room	
and kitchen .....	\$ 600.00
For lounge .....	1000.00
For Skyroom .....	333.33
For mezzanine floor banquet room .....	150.00

then in such case, the second parties shall make up and pay to first party the deficiency on any of said four classifications so failing.

If the lease is to include the garage, then the second parties shall pay monthly 10% of the gross

sworn, personally appeared S. P. Barash, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office, in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]                      MARGARET M. LYNCH,

Notary Public in and for the City and County of  
San Francisco, State of California.

[General]

My commission expires February 10, 1948.

---

EXHIBIT A

Agreement

This Agreement entered into this 24th day of September, 1946, by and between Irene Gladys Mapes, also known as Mrs. Chas. W. Mapes, of Reno, Nevada, hereinafter designated "first party," and Charles W. Mapes, Jr., of the same place, and P. G. Denson, of Visalia, California, hereinafter designated "second parties";

Witnesseth:

That Whereas, the first party intends to construct a new fireproof hotel, apartment, store building and garage, the total expense of which is now estimated

at \$800,000.00, or thereabouts, at the Southeast corner of Virginia and First Streets in the City of Reno, Nevada, having a frontage on Virginia Street of 167.64 feet and a frontage on First Street of 139.55 feet, in accordance with plans, a copy of which are annexed hereto, and specifications which are to be prepared by The Moorehead Company of Los Angeles, California, and which plans and specifications must be approved in writing by the parties hereto before any lease on said premises shall become effective; and

Whereas, inclusion of 12 feet of said frontage on Virginia Street, extending 139.55 feet easterly from Virginia Street is conditioned upon the first party consummating the purchase thereof from the City of Reno, negotiations therefor with the said City being now in progress; and

Whereas, it is contemplated the first party shall grant a lease to the second parties and the second parties shall receive a lease from the first party of all of said structure when completed, except eight (8) store spaces on Virginia Street and three (3) store spaces on First Street, on the first floor of said structure, as shown by the preliminary plans dated August 31, 1945, made by the said Moorehead Company, a copy whereof is annexed hereto and made a part hereof.

Now Therefore, This Agreement Further Witnesseth: [58]

1. That in consideration of the premises and for

[Title of District Court and Cause.]

Direct Interrogations to be Propounded

THOMAS E. HULL

1. Q. Please state your full name and place of residence.  
A. Thomas E. Hull, 7000 Hollywood Blvd., Hollywood, California.
2. Q. Do you at the present time own any hotels in the State of California, and if so, please state their names and locations?  
A. Hollywood Roosevelt; El Rancho, Sacramento, Calif.; Mirmar Hotel, Santa Monica; Arrowhead Springs Hotel.
3. Q. Have you ever formerly owned any hotels in the State of California, and if so please state their names and locations.  
A. Same as above.
4. Q. Are you acquainted with Peter G. Denson, who resides at the Sir Francis Drake Hotel, San Francisco, California, and if so, how long have you known him?  
A. Twenty-five years.
5. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.  
A. Owning and operating several hotels of prominence over the past 25 years.
6. Q. Do you know the reputation of Mr. Peter

G. Denson, the [68] plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

A. Excellent.

7. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

A. By the financial success he has achieved and by the reputation for his ability that he has in the hotel fraternity and with people such as bankers, attorneys, who have had connections and knowledge of his operations over the past 25 years.

8. Q. Assuming that there is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and prac-



tices of hotel operations on the Pacific Coast.

- A. I, personally, originated the first percentage lease on a hotel property in California, the same being at the Mayfair Hotel, Los Angeles, California. This lease was automatic in percentages—as per the terms as recited in the following brief.

The Mayfair lease by 15 years' experience has proven successful and fair to all parties concerned, and has been used by hotel accounting houses as a yardstick and considered workable, practical and a fair basis of computing the terms of rental percentage basis. I personally think the terms of rental as recited in the brief is extremely fair to the lessor. The percentages as outlined under the terms of rental in the lease brief attached can be applied to the gross receipts as estimated herewith, thereby leaving net returns to the lessor of sufficient amount to amortize the invested capital over a 20-year period, plus taxes, insurance and interest on borrowed capital, etc. [69]

“That the rental for said structure when completed, with the exceptions noted above, shall be as follows:

5% of gross receipts from food sales.

10% of gross receipts from liquors, wines and beer sales.

30% of gross receipts from hotel, rooms and apartments.

All rentals payable monthly.

“Provided, that in the event the said percentage of gross receipts shall not equal monthly—

For coffee shop, dining room and

kitchen .....\$ 600.00

For lounge ..... 1000.00

For skyroom ..... 333.33

For mezzanine floor banquet room 150.00

then in such case, the second parties shall make up and pay to first party the deficiency on any of said four classifications so failing.

“If the lease is to include the garage, then the second parties shall pay monthly 10% of the gross garage receipts, or, if the first party leases the garage to a third person, the second parties are to have the privilege of garage service for their guests on terms to be mutually agreed upon.

“That said lease shall provide that the second parties are to execute and deliver to the first party a first chattel mortgage covering the furniture, fixtures and equipment placed in the hotel and apartments as aforesaid, to secure the rental payments as provided in said lease.

“That after said lease is executed between the parties hereto and if the second parties fail either to provide and place said fur-

niture, fixtures and equipment in said hotel rooms and apartments as aforesaid, or if they fail to execute and deliver said chattel mortgage as such security as herein required, then the cash so deposited with the first party shall belong absolutely to the first party as a consideration for her entering into this agreement.

“If after said lease is executed between the parties hereto as above provided, and the second parties provide and place said furniture, fixtures and equipment in said hotel and apartments as aforesaid, and the second parties execute and deliver said chattel mortgage as security as herein required, then the cash so deposited with the first party shall belong to and be delivered to said second parties by the first party.

“The second parties, as a part of said lease, will guarantee to said first party that the total annual income from the entire building which the first party will receive will be in an amount at least sufficient to cover payments required of the first party for taxes, upkeep, insurance, interest on borrowed money, and to amortize the cost of said building within said lease period.”

Cross-Interrogatories to be Propounded to Thomas  
E. Hull, a Witness on the Part of Plaintiff

1. Q. How many hotels have you operated in Northwestern Nevada? State the names,

locations and length of time and capacity you were connected therewith.

A. I have not operated any hotels in N.W. Nevada, but I built and designed and managed the very successful Hotel El Rancho at Las Vegas, Nevada.

2. Q. If in answer to direct interrogatory No. 8 your conclusion is that the rental price and consideration for said lease is fair, equitable and just to lessor and is a fair, just and adequate amount to pay as rental for said hotel premises, please state what figure you assumed.

The ones as recited under the lease brief as attached hereto.

(a) the total annual income from the entire building to be which the lessor would receive?

A. My estimation is this hotel should gross from all departments and sub-rentals and stores approximately \$1,350,000 per year.

(b) to cover payment required to be paid by the lessor for taxes?

A. There should be ample revenue from this operation to pay taxes and all other taxes including amortization of invested capital over a period of 20 years.

(c) to cover upkeep?

A. Same as answer "b".

(d) to cover insurance?

A. Same as answer to "b".

(e) to cover interest on borrowed money?

A. Same as answer to "b".

(f) as the cost of the building and to amortize the cost of said building?

A. Same as answer "b".

(g) for allocation to the premises to leased for hotel purposes and what amount did you allocate to the 11 store spaces?

A. \$1,290,000 gross revenue from the hotel and all depts. plus \$60,000 from the stores computed annually.

3. Q. The attached statement mentioned in said direct interrogatory No. 8 provides that if the percentage of gross receipts shall not equal monthly \$2083.33 then the second parties (Lessees) shall make up and pay to the first party the deficiency on any of the four [71] classifications mentioned in said statement. In your answer to said direct interrogatory which of the two minimum rental provisions mentioned in said statement did you use in reaching your conclusion?

A. In computing the estimated figure of \$1,-350,000 gross receipts per annum I arrived at the figure as follows: Rooms dept. gross \$288,000 per annum; beverage dept. \$180,-

000; food dept. \$200,000; shop and store rentals \$60,000; concessionaires \$22,000 commissions, etc.; gross gambling \$600,000 (house revenue).

/s/ THOMAS E. HULL.

State of California,  
County of Los Angeles—ss.

Subscribed and sworn to before me December 2,  
1946, at 1 p.m.

[Seal]                   /s/ GRACE V. SMITH,  
Notary Public in and for said  
County and State.

My commission expires April 7, 1947.

[Endorsed]: Filed Dec. 13, 1946. [72]

---

Direct Interrogations to be Propounded

DAN E. LONDON

1. Q. Please state your full name and place of residence.  
A. Dan E. London, St. Francis Hotel, San Francisco, Calif.
2. Q. What is your occupation, profession or vocation?  
A. General Manager, St. Francis Hotel.
3. Q. Have you ever had any hotel experience, and if so, in what capacity?  
A. Manager Exeter Hotel, Seattle, two years. Opened Edmond Meany Hotel, Seattle, and



managed it two years. Associate manager, Multnomah Hotel, Portland, three years Manager Sir Francis Drake Hotel, San Francisco, 2½ years. General manager, St. Francis Hotel, nine years.

4. Q. Are you acquainted with Peter G. Denson, who resides at the Sir Francis Drake Hotel, San Francisco, California, and if so, how long have you known him?

A. I have known Peter G. Denson for a period of 14 years. Mr. Denson has had extensive hotel experience, having operated, since my acquaintance with him, the Medford Hotel, Medford, Oregon, from [73] 1933 to 1936; the Travelers Hotel, Dunsmuir, California, from 1930 to 1939, and the Johnson Hotel at Visalia, California, from 1937 to 1946.

5. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.

A. His experience has been extensive, as he managed the Medford Hotel, Medford, Oregon, 1933 to 1936; Travelers Hotel, Dunsmuir, Calif., 1930 to 1939; Johnson Hotel, Visalia, Calif., 1937 to 1946.

6. Q. Do you know the reputation of Mr. Peter G. Denson, the plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

A. I do know his reputation.

7. Q. If your answer to the last question is in the affirmative please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

A. Mr. Denson is considered an exceptionally capable hotel operator and to my knowledge has always conducted successful operations which have been well regarded by the traveling hotel public. In my opinion, his ability to manage a hotel efficiently is unquestioned.

8. Q. Assuming that there is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and practices of hotel operations on the Pacific Coast.

- A. In my opinion, from an examination of the attached statement of lessors, return from the hotel building, including subrentals from a number of stores, will be more than sufficient to take care of all major obligations and quite enough to amortize the loan over a period of twenty years, for which period I understand the lease is drawn. The percentage figures, which, of course, are the most important from the viewpoint of the owner, are very fair and are usual and comparable to percentage figures in other hotel leases. [74]

[Attached statement and agreement is identical with the one set out in Deposition of Thomas E. Hull, and appears on page 69.]

Cross-Interrogatories to be Propounded to Dan E. London, a Witness on the Part of the Plaintiff

1. Q. How many hotels have you operated in Nevada? State the names, locations and length of time and capacity you were connected therewith.

A. No.
2. Q. If in answer to direct interrogatory No. 8 your conclusion is that the rental price and consideration for said lease is fair, equitable and just to lessor and is a fair, just and adequate amount to pay as rental for said hotel premises, please state what figure you assumed:

(a) the total annual income from the entire building to be which the lessor would receive?

A. \$180,000 to \$190,000.

(b) to cover payment required to be made by the lessor for taxes?

A. Approximately \$20,000.00 for taxes and insurance.

(c) to cover upkeep?

(d) to cover insurance?

A. Answered in "b" above.

(e) to cover interest on borrowed money?

A. This is entirely based on the amount borrowed.

(f) as the cost of the building and to amortize the cost of said building?

A. Entirely depending on the amount borrowed.

(g) for allocation to the premises to be leased for hotel purposes and what amount did you allocate to the 11 store spaces?

A. I am not familiar with store frontage rentals there.

3. Q. The attached statement mentioned in said direct interrogatory No. 8 provides that if

the percentage of gross receipts shall not equal monthly \$2083.33 then the second parties (lessees) shall make up and pay to the first party the deficiency on any of the four classifications mentioned in said statement. In your answer to said direct interrogatory which of the two minimum rental provisions mentioned in said statement did you use in reaching your conclusion.

A.

[Notary Seal]

Nov. 22nd, 1946. 9:25 a.m.

DAN E. LONDON.

State of California,  
City and County of San Francisco—ss.

On this 22nd day of November in the year One Thousand Nine Hundred and Forty-six before me Emi Eggers Del Bono, a Notary Public, in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Dan E. London, known to me to be the person described in, whose name is subscribed to and who executed the within and annexed instrument and he acknowledge to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed by Official Seal, at my office in the

City and County of San Francisco, the day and year in this Certificate first above written.

[Seal]                   EMI EGGERS DEL BONO,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires August 27, 1947.

I, Emi Eggers Del Bono, hereby certify that I am a duly commissioned Notary Public in and for the City and County of San Francisco, State of California; that my commission expires August 27, 1947; that the witness named in the foregoing deposition consisting of direct and cross interrogatories was duly sworn by me and that the foregoing testimony set forth in said deposition (direct and cross-interrogatories) is a true record of the testimony given by said witness.

In Witness Whereof, the undersigned Notary Public has executed this certificate and attached her official seal thereto.

[Seal]                   EMI EGGERS DEL BONO,  
Notary Public in and for the City and County of  
San Francisco, State of California. [77]

---

[Title of District Court and Cause.]

Direct Interrogatories to be Propounded

MISS RUTH MASON

a witness on behalf of the Plaintiff.

1. Q. Please state your full name and place of residence, together with your business and occupation?



A. Ruth Roberta Mason, 503 Commonwealth, Los Angeles 5, Calif., Interior Decorator and salesperson for Barker Bros., Hotel & Apt. House Div., 733 South Flower street, Los Angeles 14, California.

2. Q. Are you acquainted with the plaintiff, P. G. Denson, and if so, how long have you known him?

A. Yes, have known him since February, 1946.

3. Q. What was the nature of your employment, profession, vocation or occupation on or about the 1st day of April, 1946, and by whom, if at all, were you employed?

A. Interior decorating, designing, selling for for Barker Bros.

4. Q. Please state whether on or about the 1st day of April, 1946, you visited the City of Oakland, California, on a business mission?

A. Yes, I did go to Oakland on 1 April, 1946, on a business mission.

5. Q. If your answer to the last question is in the affirmative, please state whether you had a business appointment in Oakland, California, at what place, and at whose instance and request was the appointment made.

A. I had an appointment at the office of the Morehead Company, in the Henshaw Building, 14th street near Broadway, Oakland, made at the request and arrangement of

Mr. Peter Denson, to meet with Mr. Charles Mapes, Mr. Slocum and Mr. Morehead and Mr. Denson. [78]

6. Q. If your answer to the last question is in the affirmative, please state, as nearly as you recall, who were present at that appointment and business meeting.

A. Mr. Mapes, who drove us over from San Francisco, his uncle, Mr. Hart, Mr. Denson, Mr. Slocum and Mr. Morehead.

7. Q. Please state with as much detail as possible, as nearly as you recall, what was said and done by you and each and all of the parties present at that meeting.

A. At Mr. Denson's request, seconded by Mr. Mapes, I showed and explained my drawings and plans for the new hotel, working from the ground floor throughout to the room floors, and then to the Sky Room, or roof. There was much discussion and interest displayed, several modifications suggested on the original plans, some omissions and changes in the Kitchen layout. The conference took about three hours. At about 12:15 or so, Mr. Mapes asked us all to luncheon with him "to continue the conference later." We all, except Mr. Slocum who had an appointment out of town, went to lunch together and returned about 1:40 or so. Then Mr. Mapes and Mr. Morehead said they wouldn't go on with the dis-

cussion of the Roof, or Sky Room, as "they had other plans and would go into those with Mr. Denson." However, Mr. Mapes expressed his appreciation of the drawings, and kept a copy of the Coffee Shop and Kitchen layout. Mr. Mapes then drove Mr. Hart, Mr. Denson and me back to the Sir Francis Drake Hotel in San Francisco, and took the package of plans and drawings up to my room for me.

8. Q. When did the meeting convene and when did it adjourn?

A. Convened approximately 9:30 and adjourned approximately 12:15. Then reconvened at approximately 1:40 and adjourned within about ten minutes.

9. Q. State whether there was any further discussion after the adjournment of the meeting with any of the parties present and within the hearing of Charles W. Mapes, Jr., one of the defendants herein, and if so, where did the discussion take place, and to the best of your recollection what was said with respect to the business matters involved? A. See #7 herewith.

/s/ RUTH ROBERTA MASON.

State of California,  
County of Los Angeles—ss.

Subscribed and sworn to before me this 2nd day  
of December, 1946, at 9 a.m.

[Seal]        /s/ GRACE V. SMITH,

Notary Public in and for said  
County and State.

My Commission Expires April 7th, 1947. [79]

### CERTIFICATE OF NOTARY

I, Emi Eggers Del Bono, hereby certify that I  
am a duly commissioned Notary Public in and for  
the City and County of San Francisco, State of Cali-  
fornia; that my commission expires August 27, 1947;  
that the witness named in the foregoing deposition  
consisting of direct and cross-interrogatories was  
duly sworn by me and that the foregoing testimony  
set forth in said deposition (direct and cross-inter-  
rogatories) is a true record of the testimony given  
by said witness.

In Witness Whereof, the undersigned Notary  
Public has executed this certificate and attached  
her official seal thereto.

[Seal]        /s/ EMI EGGERS DEL BONO,

Notary Public in and for the City and County of  
San Francisco, State of California.

Mr. Commission Expires August 27, 1947.

[Endorsed]: Filed Dec. 13, 1946. [80]

[Title of District Court and Cause.]

Direct Interrogatories to be Propounded

DOUGLAS STONE

1. Q. Please state your full name and place of residence.      A. Douglas Dacre Stone.
2. Q. What is your business and profession?  
A. Architect.
3. Q. How long have you been engaged in said business and profession?  
A. Since 1926.
4. Q. Have you had experience in the designing and constructing of hotels?  
A. Yes. Gaylord Hotel, El Cortez Hotel, San Francisco; Claridge Hotel, Oakland; Sir Francis Drake Hotel, San Francisco (alterations); Empire Hotel, San Francisco.
5. Q. Are you acquainted with the plaintiff, P. G. Denson, and if so, how long have you known him?  
A. Yes, I have known Mr. Denson for twelve years.
6. Q. Are you acquainted with Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, and Charles W. Mapes, Jr., and Gloria Mapes, or either or any of them?  
A. I know Irene Gladys Mapes. I do not know Charles W. Mapes, Jr., or Gloria Mapes.
7. Q. If your answer to the previous question is in the affirmative, state when and where you

first met them or any or either of them?

A. I first met Irene Gladys Mapes in Reno, in 1940.

8. Q. Please state whether or not you discussed the construction and operation of a hotel on the Mapes property, known as the old postoffice site on Virginia Street, in Reno, Nevada, with Mrs. Mapes some time during February or March, 1940. A. Yes.

9. Q. If your answer to the previous question is in the affirmative, please state who was with you at the time you discussed the matter of the construction and operation of a hotel on the property aforesaid.

A. P. G. Denson, Plaintiff, Sid Barash, hotel broker, and Lee Huckins, hotel operator.

10. Q. If you have already testified that you had a conversation or conversations with Mrs. Mapes, please testify what the conversation or conversations were, to the best of your recollection.

A. The conversation was in effect that I might be employed as the architect for the construction of the hotel upon the site above referred to and Mr. Barash might be interested in financing, Mr. Huckins and Mr. Denson might be interested in the operation of the hotel as tenants in accord with the lease to be agreed to.

11. Q. Please state what conversation or conver-



sations you had with Mrs. Mapes relative to the construction and operation of said proposed hotel and the drawing of plans by you for said proposed hotel, giving the number of conversations and when and where they occurred, and the persons present.

A. I had three meetings with Mrs. Mapes including the first one above referred to. The second meeting was approximately several months later. At that meeting Mrs. Mapes and I were present and I think, Mr. Denson and Mr. Huckins. I had prepared preliminary plans and I explained the plans to those present. There was a third meeting which took place several months after the second meeting. Mrs. Mapes and I were the only ones present. I presented to her revisions of the previously submitted plans and these were discussed.

12. Q. Please state why you went to Reno at that time and at whose request.

A. I went to Reno on the foregoing occasions in the possible anticipation of being employed as architect for the construction of the hotel at the request of Mr. Denson and Mr. Huckins.

13. Q. Please state whether or not Mr. P. G. Denson had any conversation or conversations with Mrs. Mapes regarding the construction, operation, and financing of said proposed hotel.

- A. Yes. Mr. Denson on the first occasion, and possibly the second, if he were present in accord with my recollection, had conversations with Mrs. Mapes relative to leasing the hotel, construction thereof and financing of the project.
14. Q. If your answer to the previous question is in the affirmative, please state what said conversation or conversations consisted [82] of, when and where they took place, and who was present.
- A. The conversations with Mrs. Mapes and Mr. Denson were on the first two occasions above referred to, assuming that Mr. Denson was there on the second occasion which is my best recollection, and they consisted of discussions concerning leasing, construction and financing the hotel and Mr. Denson's experience as a hotelman.
15. Q. If negotiations were carried on in respect to the construction, operation, and financing of said proposed hotel, please state the conversations, please state the substance of said conversations and particularly the conversations or substance of conversations relating to the possible leasing and operation of that hotel by P. G. Denson, if such was the case.
- A. I cannot remember the details of the conversations but the subject matter is set forth in my previous answers.

16. Q. If negotiations continued for the construction, operation, and financing of said proposed hotel, please state how long said negotiations continued and the reason for the termination of said negotiations, if you know.
- A. My knowledge of negotiations and discussions is confined to the three meetings above referred to, and these three meetings were within a period of about six months from the first meeting. The first and second meetings were about two hours each and the third was about one hour. I do not know anything about termination of negotiations or the reason therefor.
17. Q. Please state how many times you came to Reno to discuss said proposed hotel with Mrs. Mapes.           A. Three times.
18. Q. Please state whether or not you prepared any drawings, pictures, and plans for Mrs. Mapes and if so, state whether they were delivered to Mrs. Mapes by you.
- A. I prepared preliminary drawings for the hotel and revised preliminary drawings therefor and explained them to Mrs. Mapes. I did not leave them with her. They are in my office and still available, if desired.
19. Q. Please state, to the best of your ability, the conversation that took place with Mrs. Mapes at the time you submitted said draw-

ings, pictures, and plans to her, stating where they were submitted and who was present.

A. I can only remember the subject matter of the conversation and not details. The subject matter is set forth in my previous answers.

20. Q. Please state whether or not the name of the proposed hotel was designated on said drawings prepared by you and, if so, what that name was.

A. I do not remember any name being suggested although it could readily have been.

21. Q. Please state how long you have known Mr. P. G. Denson, the plaintiff in this case.

A. Twelve years. [83]

22. Q. Have you ever had any business dealings with P. G. Denson in respect to hotels as it relates to your profession?

A. Mr. Denson and Mr. Huckins employed me to design a motel to be constructed in Sacramento, California.

23. Q. Please state your experience as an architect and designer of hotels.

A. I have been an architect for over twenty years steadily engaged in that profession. During that period my employees gradually grew from none to the present number of about twenty-five. I have designed hotels, as set forth in my previous answers.

I have likewise designed and supervised construction of medical-dental buildings, general commercial buildings, homes (to a lesser degree), hospitals (privately owned and for the Government), and structures of every character.

24. Q. From your business dealings with Mr. P. G. Denson, please state whether or not, in your opinion, he is a man well qualified to pass upon the fitness of hotel plans from the standpoint of a practical hotel operator.

A. I consider Mr. Denson well qualified from his hotel experience of many years to pass upon the fitness of hotel plans from the standpoint of the operator. His experience well qualifies him for such.

25. Q. From your experience, resulting from your business dealings with Mr. P. G. Denson, state whether or not, in your opinion, the advice of Mr. P. G. Denson to an architect and builder of a hotel is valuable.

A. I consider from my experience with Mr. Denson that his advice to an architect and builder of hotels would be highly valuable as a result of his many years of hotel operation.

26. Q. If your answer to the previous question is in the affirmative, please state the reason therefor.

A. My reason for considering that Mr. Den-

son has these qualifications is his long, successful experience as a hotel operator in a number of hotels. My reason for realizing that his advice on hotel construction would be valuable is my experience with him in connection with such matters.

/s/ DOUGLAS DACRE STONE.

Cross-Interrogatories to Be Propounded to Douglas Stone, a Witness on the Part of Plaintiff

1. Q. Have you had any discussion with Irene Gladys Mapes or Charles W. Mapes, Jr., or Gloria Mapes, or any of them, in regard to the designing or construction of the Mapes Hotel in Reno since September 24, 1945; if so, give the time, place and persons present on each occasion?

A. I had no conversations with Mrs. Mapes since September 24, 1945.

/s/ DOUGLAS DACRE STONE.

[Endorsed]: Filed Dec. 13, 1946. [85]

---

[Title of District Court and Cause.]

Direct Interrogatories to be Propounded

MR. WILL P. TAYLOR

1. Q. Please state your full name and place of residence.  
A. Will P. Taylor, San Francisco, California.
2. Q. What is your occupation, profession or vocation?  
A. Hotel manager.



3. Q. Are you associated in any official capacity with the Bellevue Hotel, San Francisco, and if so, in what capacity and for how long a period of time?

A. Resident manager, Hotel Bellevue, since September 1, 1946.

4. Q. Have you ever acted in any official capacity of any other hotels in the State of California, and if so, please state their names and in what capacity you served, and for how long a period of time?

A. Manager of Palace Hotel, December, 1938, to April, 1940; manager, Santa Barbara Biltmore, May, 1940, to August, 1943; manager Hotel Senator, Sacramento, December, 1943, to May, 1946. [86]

5. Q. Are you acquainted with Peter G. Denson, who resides at the Sir Francis Drake hotel, San Francisco, California, and if so, how long have you known him?

A. Yes, I haave known Mr. Peter D. Denson approximately twenty years.

6. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.

A. Yes, I can certify that I have known of his ownership and operation of Hotel Medford, Medford, Oregon, Hotels Senator

and Governor, San Francisco, Hotel Tioga, Merced, and Hotel Johnson.

My recollection is that Mr. Denson in the majority of cases mentioned, built, opened and operated the above hotels.

7. Q. Do you know the reputation of Mr. Peter G. Denson, the plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

A. Yes, it is excellent.

8. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

A. It is my opinion Mr. Denson's qualifications, his ability, integrity and efficiency as an hotel operator are excellent, and he could be depended upon to achieve satisfactory results in every particular.

9. Q. Assuming that there is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to

the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and practices of hotel operations on the Pacific Coast.

A. Yes, I would consider it more than equitable. [87]

[Attached statement and agreement is identical with the one set out in Deposition of Thomas E. Hull, as appears on page 71.]

Cross-Interrogatories to Be Propounded to William Taylor, a Witness on the Part of Plaintiff

1. Q. How many hotels have you operated in Nevada? State the names, locations and length of time and capacity you were connected therewith.

A. I have not been directly associated with any hotel in the State of Nevada—however, I have been indirectly connected by chain operation with El Rancho Vegas some time ago.

2. Q. If in answer to Direct Interrogatory No. 9 your conclusions is that the rental price and consideration for said lease is fair, equitable and just to lessor and is a fair, just and adequate amount to pay as rental for said hotel premises, please state what figure you assumed:

- (a) the total annual income from the entire building to be which the lessor would receive?

A.

- (b) to cover payment required to be paid by the lessor for taxes?

A.

- (c) to cover upkeep?

A.

- (d) to cover insurance?

A.

- (e) to cover interest on borrowed money?

A.

- (f) as the cost of the building and to amortize the cost of said building?

A.

- (g) for allocation to the premises to be leased for hotel purposes and what amount did you allocate to the 11 store spaces?

3. Q. The attached statement mentioned in said Direct Interrogatory No. 9 provides that if the percentage of gross receipts shall not equal monthly \$2083.33 then the second parties (lessees) shall make up and pay to the first party the deficiency on any of the four classifications mentioned in said

statement. In your answer to said direct interrogatory which of the two minimum rental provisions mentioned in said statement did you use in reaching your conclusion?

- A. "A" to "E" both inclusive of Page 1 of Cross-interrogatory: I have made some estimates based on the results that could be conservatively obtained in the operation of an Hotel located in Reno, and, as equitable to the Lessor and to my knowledge goes beyond the usual lease in many cases I know of. The percentages should not be any higher, as the Lessee must be able to operate successfully in order to insure his guarantees to the Owner and meet his own obligations. The Lessee secures the Owner, I understand, through the execution of a chattel mortgage on the furnishings, which should prove ample security and result in a lease entirely fair to the Owner, in my opinion. An operator of ability and experience is an essential prerequisite to all of the above and I deem Mr. Peter Denson fully qualified, as previously mentioned. The combinations existing in this case, in my opinion, make a fair lease to the parties concerned. Naturally, there must be sufficient rooms to produce a given revenue and in my calculations I have based same on a total of

not less than 250 rooms, to be either straight hotel rooms and three room apartments, with the hotel rooms well in the majority.

/s/ WILL P. TAYLOR. [90]

State of California,

City and County of San Francisco—ss.

On this 22nd day of November in the year One Thousand Nine Hundred and Forty-six, before me, Emi Eggers Del Bono, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Will P. Taylor, known to me to be the person described in, whose name is subscribed to and who executed the within and annexed instrument and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year in this Certificate first above written.

[Seal]

EMI EGGERS DEL BONO,  
130 Montgomery Street,

Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires August 27, 1947.

#### CERTIFICATE OF NOTARY

I, Emi Eggers Del Bono, hereby certify that I



am a duly commissioned Notary Public in and for the City and County of San Francisco, State of California; that my commission expires August 27, 1947; that the witness named in the foregoing deposition consisting of direct and cross-interrogatories was duly sworn by me and that the foregoing testimony set forth in said deposition (direct and cross-interrogatories) is a true record of the testimony given by said witness.

In Witness Whereof, the undersigned Notary Public has executed this certificate and attached her official seal thereto.

[Seal]                      EMI EGGERS DEL BONO,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Dec. 13, 1946. [91]

---

[Title of District Court and Cause.]

Proposed Direct Interrogatories to be Propounded

MR. GEORGE T. THOMPSON

1. Q. Please state your full name and place of residence.

A. George T. Thompson.

2. Q. What is your occupation, profession or vocation?

A. Vice President and Managing Director,  
Sir Francis Drake Hotel.

3. Q. Please state whether you have ever been

engaged in the hotel business, and if so, for how long a period of time.

A. 25 years.

4. Q. Is it not a fact that for some time last past you have been managing director of the Hotel Sir Francis Drake, San Francisco, California? A. 5 years.

5. Q. Do you own any hotels at the present time, and if so, what are they and where are they situated?

A. Sonoma Mission Inn, Boyes Springs, California; President Hotel, Palo Alto, California; Eureka Inn, Eureka, California.

6. Q. Are you acquainted with Peter G. Denson, who resides at the Sir Francis Drake Hotel, San Francisco, California, and if so, how long have you known him?

A. Yes. 15 years. [92]

7. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and character of that experience? Please answer with as much detail as possible.

A. I have known Mr. Denson as operator of hotels during the past 15 years and I am positive that all of these hotels were operated successfully and that he is considered a good hotel operator among the hotel fraternity.

8. Q. Do you know the reputation of Mr. Peter

G. Denson, the plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

A. Mr. Denson has been actively engaged in the hotel business and also has been on the Board of Directors of the California State Hotel Association for a number of years. I consider him a man of ability and integrity and an efficient hotel operator.

9. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

A. Question 9 is answered by question 8.

10. Q. Assuming that there is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee or lessees thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to the rental price and consideration for said lease is fair equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the

usual custom and practices of hotel operations on the Pacific Coast.

- A. The guaranteed rental on the hotel now under construction known as the Mapes Hotel is higher than the going rate at the present time. [93]

[Attached statement and agreement is identical with the one set out in Deposition of Thomas E. Hull, and appears on page 71.]

Cross-Interrogatories to Be Propounded to George T. Thompson, a Witness on the Part of Plaintiff

1. Q. How many hotels have you operated in Nevada? State the names, locations and length of time and capacity you were connected therewith.

A. I have not operated any hotels in the State of Nevada.

2. Q. If in answer to Direct Interrogatory No. 10 your conclusion is that the rental price and consideration for said lease is fair, equitable and just to lessor and is a fair, just and adequate amount to pay as rental for said hotel premises, please state what figure you assumed:

(a) the total annual income from the entire building to be which the lessor would receive?

- A. Based on prevailing hotel rates on an approximate 300 room hotel with anticipated

receipts from food and liquor, the lessor should receive, in my opinion, approximately \$175,000.00 per year.

(b) to cover payment required to be paid by the lessor for taxes?

A. \$20,000.00 a year covers the payments on upkeep, insurance and taxes.

(c) to cover upkeep?

A. Answered above.

(d) to cover insurance?

A. Answered above.

(e) to cover interest on borrowed money?

A. \$32,000.00, assuming the amount of the loan is \$800,000.00 to 4%.

(f) as the cost of the building and to amortize the cost of said building?

A. I estimate the amortization \$40,000.00 a year.

(g) for allocation to the premises to be leased for hotel purposes and what amount did you allocate to the 11 store spaces?

A. \$45,000.00.

3. Q. The attached statement mentioned in said Direct Interrogatory No. 10 provides that if the percentage of gross receipts shall not equal monthly \$2083.33 then the second

parties (lessees) shall make up and pay to the first party the deficiency on any of the four classifications mentioned in said statement. In your answer to said direct interrogatory which of the two minimum rental provisions mentioned in said statement did you use in reaching your conclusion?

- A. My understanding is that the amount of \$2,083.33 per month was made up by the figures of \$600.00 from the Coffee Shop, kitchen and dining room, \$1,000.00 from the Cocktail Lounge, \$333.33 from the [95] Sky Room and \$150.00 from the Banquet Room.

/s/ GEORGE T. THOMPSON.

State of California,  
City and County of San Francisco—ss.

On this 22nd day of November, in the year One Thousand Nine Hundred and Forty-six, before me, Emi Eggers Del Bono, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared George T. Thompson, known to me to be the person described in, whose name is subscribed to and who executed the within and annexed instrument and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in



the City and County of San Francisco, the day and year in this Certificate first above written.

[Seal]     /s/ EMI EGGERS DEL BONO,

Notary Public in and for the City and County of  
San Francisco, State of California.  
130 Montgomery Street.

My commission expires August 27, 1947. [96]

### CERTIFICATE OF NOTARY

I, Emi Eggers Del Bono, hereby certify that I am a duly commissioned Notary Public in and for the City and County of San Francisco,, State of California; that my commission expires August 27, 1947; that the witness named in the foregoing deposition consisting of direct and cross-interrogatories was duly sworn by me and that the foregoing testimony set forth in said deposition (direct and cross-interrogatories) is a true record of the testimony given by said witness.

In Witness Whereof, the undersigned Notary Public has executed this certificate and attached her official seal thereto.

[Seal]     /s/ EMI EGGERS DEL BONO,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Dec. 13, 1946. [97]

[Title of District Court and Cause.]

Direct Interrogatories to be Propounded

HARVEY M. TOY

1. Q. Please state your full name and place of residence.  
A. Harvey M. Toy. Hotel Manx, 225 Powell Street, San Francisco, California.
2. Q. Please state whether you own any hotel or hotels in the City of San Francisco, State of California, and if so, please state their names and locations.  
A. Manx Hotel—300 rooms—225 Powell Street, San Francisco, California.
3. Q. How long have you been engaged in the hotel business in California, or otherwise. Please answer with as much detail as possible.  
A. Forty years in hotel brokerage business, and approximately the same time in operation of hotels and ownership of hotels. All my business life has been connected in buying, operating and selling hotels.
4. Q. Are you acquainted with Peter G. Denson, who resides at the Sir Francis Drake Hotel, San Francisco, California, and if so, how long have you known him?  
A. Yes. I have known him intimately for thirty (30) years.
5. Q. Do you know of your own knowledge whether Mr. Denson has had any hotel experience, and if so, what is the nature and

character of that experience? Please answer with as much detail as possible.

A. Yes. I have visited all the many hotels Peter G. Denson has built—owned and operated. I sold him the Johnson Hotel, in Visalia, California, which I know he sold to go into the Reno Hotel. He [98] built and operated the Senator and Governor Hotels, in San Francisco. Also built and operated the Tioga Hotel, at Merced, California. He operated the Hotel Medford, Medford in Oregon, and the hotel Travellers in Duns-muir, California. There are several more hotels he operated which I cannot now remember. Therefore, he is a builder, lessee, operator and owner of wide experience—all of his ventures were successful.

6. Q. Do you know the reputation of Mr. Peter G. Denson, the plaintiff in this action, for his ability, integrity and efficiency as a hotel man and hotel operator?

A. Yes. I consider Mr. Peter G. Denson one of California's best and most outstanding hotel managers and operators. He is strictly honest—extremely efficient and economical. He stands very high in the opinion of all California hotel men.

7. Q. If your answer to the last question is in the affirmative, please state what in your opinion his ability, integrity and efficiency as a hotel man and hotel operator is.

- A. It is of the highest type. He has always been most successful and made money in all of his ventures. I would be willing to employ him at a splendid salary and percentage to operate my chain of hotels.
8. Q. Assuming that there is being constructed in Reno, Nevada, what is known as the Mapes Hotel, at a cost and expense of approximately one million four hundred thousand dollars, and assuming that a contemplated lessee, or lessees, thereof are to adequately and suitably furnish the same and pay the costs and expenses therefor and give a chattel mortgage thereon as a guarantee for the payment of the rent, please state whether in your opinion the attached statement and agreement as to the rental price and consideration for said lease is fair, equitable and just to the lessor, and is a fair, just and adequate amount to pay as rental for said hotel premises in accordance with the usual custom and practices of hotel operations on the Pacific Coast.
- A. In answer the question 8—the lessor's return from the entire building, which includes the rentals from the number of stores, which I understand are eleven in all—will be more than sufficient to take care of all her obligations such as taxes, insurance, interest on borrowed money, and amortize the loan over a period of the

twenty (20) years, which I am informed the lease is for. Due to the fact that the rentals on the stores in the heart of Reno, are very good, and with five per cent for foods, and ten per cent for beverages, and thirty per cent for all apartments and hotel rooms—gross rentals that is to be paid to lessors by lessee, and with a hotel with approximately three hundred rooms, and with the prevailing rentals in first class hotels, it will be more than sufficient to take care of all the obligations that the lessor would have to meet. As to the fairness to the owner of the property who is leasing the hotel, the above percentages are more than just and adequate in the amount to pay for any hotel. In fact the prevailing rate is now twenty-five (25%) per cent for rooms—five (5%) for food, and eight per cent (8%) for beverages. [99]

[Attached statement and agreement is identical with the one set out in Deposition of Thomas E. Hull, and appears on page 71.]

Cross-Interrogatories to Be Propounded to Harvey  
M. Toy, a Witness on the Part of Plaintiff

1. Q. How many hotels have you operated in Nevada? State the names, locations and length of time and capacity you were connected therewith. A. None.
2. Q. If in answer to Direct Interrogatory No. 8

your conclusions is that the rental price and consideration for said lease is fair, equitable and just to lessor and is a fair, just and adequate amount to pay as rental for said hotel premises, please state what figure you assumed:

(a) the total annual income from the entire building to be which the lessor would receive?

A. Approximately \$180,000.00—to \$185,000.00 yearly—for the lessor—from entire building—stores and all.

(b) to cover payment required to be paid by the lessor for taxes?

A. As to question b-c- and d- \$20,000.00 a year would be my estimate to cover these three.

(c) to cover upkeep?

A.

(d) to cover insurance?

A.

(e) to cover interest on borrowed money?

A. Four per cent (4%) on borrowed money my understanding is they are trying to borrow \$650,000.00 or \$625,000.00—even \$800,000.00—\$72,000.00 would cover interest and ammortization over twenty (20) years.

(f) as the cost of the building and to amortize the cost of said building?

A. I was told this was to be amortized over a twenty (20) year period, and also that it



was not the cost of the building, but the amount of the borrowed money which was to be amortized over the 20 year period.

(g) for allocation to the premises to be leased for hotel purposes and what amount did you allocate to the 11 store spaces?

A. On basis of about 90 feet on Virginia Street at about \$30.00 per foot, and about 48 feet at \$25.00 a foot on First Street. This would be equivalent to approximately about \$45,000.00 a year for the stores alone.

3. Q. The attached statement mentioned in said Direct Interrogatory No. 8 provides that if the percentage of gross receipts shall not equal monthly \$2083.33 then the second parties (lessees) shall make up and pay to the first party the deficiency on any of the four classifications mentioned in said statement. In your answer to said direct [101] interrogatory which of the two minimum provisions mentioned in said statement did you use in reaching your conclusion?

A. The total amount of \$2,083.33 per month was made up from taking \$600.00 for the Coffee Shop, Dining room and kitchen—\$1,000.00 a month for the Cocktail Lounge on the first floor—\$333.33 for the Sky Room and \$150.00 for the banquet room on the mezzanine floor.

These are the percentages as shown on

the statement attached—page four of the document, but as the five per cent gross on food and ten per cent on beverages, and \$333.33 for the Sky Room and also the \$150.00 for the mezzanine banquet room, which of course are monthly guarantees, your gross business would have to be sufficient to take care of that fixed amount of the \$2083.33, which is mentioned in question three on the last page.

/s/ HARVEY M. TOY.

State of California,

City and County of San Francisco—ss.

On this 22nd day of November, in the year One Thousand Nine Hundred and Forty-six before me, Emi Eggers Del Bono, a Notary Public, in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Harvey M. Toy, known to me to be the person described in, whose name is subscribed to and who executed the within and annexed instrument and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my office in the City and County of San Francisco, the day and year in this Certificate first above written.

[Seal]                      EMI EGGERS DEL BONO,  
Notary Public in and for the City and County of  
San Francisco, State of California, 130 Montgomery Street.

My Commission Expires August 27, 1947. [102]

CERTIFICATE OF NOTARY

I, Emi Eggers Del Bono, hereby certify that I am a duly commissioned Notary Public in and for the City and County of San Francisco, State of California; that my commission expires August 27, 1947; that the witness named in the foregoing deposition consisting of direct and cross-interrogatories was duly sworn by me and that the foregoing testimony set forth in said deposition (direct and cross-interrogatories) is a true record of the testimony given by said witness.

In Witness Whereof, the undersigned Notary Public, has executed this certificate and attached her official seal thereto.

[Seal]      /s/ EMI EGGERS DEL BONO,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Dec. 13, 1946. [103]

In the District Court of the United States, in and for  
the District of Nevada

No. 552

P. G. DENSON,

Plaintiff,

vs.

IRENE GLADYS MAPES, also known as MRS.  
CHARLES W. MAPES, CHARLES W.  
MAPES, JR., GLORIA MAPES, and CHAS.  
W. MAPES COMPANY, a co-partnership,  
Defendants.

Before: Hon. Roger T. Foley, Judge.

## TRANSCRIPT OF TESTIMONY

### TRIAL

Be It Remembered, That the above-entitled matter came on regularly for trial before the Court without a jury, at Reno, Nevada, on Monday, October 28, 1946, Hon. Roger T. Foley, Judge, presiding.

Appearances:

Platt & Sinai, by Samuel Platt, Esq., and John S. Sinai, Esq., Attorneys for Plaintiff.

H. R. Cooke, Esq., and John D. Furrh, Jr., Esq. Attorneys for Defendants.

The following proceedings were had: [109]

The Court: The case of Denson vs. Mapes.

Mr. Sinai: All ready for the plaintiff, your Honor.

Mr. Cooke: Ready for the defendants.

The Court: I would appreciate a statement as shown by the pleadings before we enter upon the taking of testimony.

Opening Statement by Mr. Platt

Mr. Platt: If the Court please, this is a suit in equity for the specific performance of a contract for leasing of hotel premises within the City of Reno, County of Washoe, State of Nevada. The amended complaint alleges the usual grounds for jurisdiction of this court, based upon the diversity of State citizenship and the statutory amount involved, exclusive of costs and interest. The amended complaint was filed because of an affidavit submitted by two of the defendants, Mrs. Mapes and Gloria Mapes, in which it was alleged that an interest in the hotel premises had been conveyed by the defendant, Mrs. Mapes, to the defendant, Gloria Mapes. The court, upon our motion, permitted the filing of the amended complaint so as to bring in Gloria Mapes as a party defendant.

Paragraph III of the amended complaint alleges that Mrs. Charles W. Mapes, at the time of the entering into of this agreement seized in fee of the hotel premises or lands involved.

Paragraph IV alleges that if there was a conveyance of any part or portion of the land and premises involved, it was made with knowledge upon the part of the defendant, Gloria [110] Mapes of the existence of said agreement.

Paragraph V alleges that the agreement was entered into on the 24th day of September, 1945, with respect to the leasing of the hotel part of the

building, excluding the so-called stores on the first floor. There is attached to the amended complaint a copy of the agreement. The same paragraph goes on to recite that said agreement is certain, definite, just, reasonable and mutual in its obligations and in all its parts. Then the amended complaint sets forth the rental price and consideration of the several parts and portions of the hotel premises to be occupied by the contemplated lease, and likewise provides that the tenant shall make up and pay any deficiency on any of the said four classifications so failing, the rental consideration being a certain percentage of the gross taken under these various departments in the performance of the lease. It further alleges that the period of the lease is set at not less than 20 years. It is also alleged that the rental shall be paid monthly. That time of payment is definitely expressed, and it is also alleged that it is stated in the written agreement itself and acknowledged that the agreement was entered into for a valuable and sufficient consideration present and received.

Paragraph VI of the amended complaint alleges that in accordance with one of the provisions or conditions of the agreement, the plaintiff deposited with the defendant, Irene [111] Gladys Mapes, the sum of ten thousand dollars and likewise alleges that at the request of the defendant, Irene Gladys Mapes, the plaintiff engaged an architect and contractor now constructing the hotel building upon said premises, that he conferred on many occasions with said architect and with the contractor em-



ployed on the work and with members of their staffs, with the defendants, and expended the necessary time and expense for attendance upon those conferences. Then it is alleged, if the Court please, that at the request of the defendant, Irene Gladys Mapes, the plaintiff secured a large and appreciable loan. I might interpolate here by stating that it was disclosed by one of the affidavits filed by the defendant, Mrs. Mapes, that she had secured the loan from other sources, and your Honor will find in the records a counter-affidavit executed by the plaintiff, in which affidavit he stated that he made every effort to secure the loan, negotiated with responsible financial parties, that they agreed to grant the loan, that he communicated that consent to Mrs. Mapes, but later learned that she had secured the loan from other sources, so in order that the amended complaint might comply with the facts as the plaintiff understands them, we ask the privilege of amending this paragraph of the amended complaint in conformity with the statement made in the counter-affidavit of the plaintiff.

The Court: Any objection to such an amendment, Mr. [112] Cooke?

Mr. Cooke: Yes, any alleged efforts and all that thing is stated in the affidavit and if he secured the loan, I think that the allegation should stand; if he did not, that anything he did or tried to do or didn't do is quite immaterial.

Mr. Platt: We think, your Honor, it is very material in order to show the efforts made by the plaintiff to cooperate with the requests and desires of the company.

Mr. Cooke: I submit, it is not efforts, it is what is done.

Mr. Platt: In fact we expect to establish, as a matter of equity, that the defendants leaned upon the plaintiff for many things involved in the erection of this note. We expect to show that it was at the request of the defendant, Mrs. Mapes, that Mr. Denson attempted to make the loan, in order to assist her, and he certainly exercised time and effort in order to accomplish it and would accomplished it unless she had negotiated the loan through other sources.

The Court: That amendment requested would be between lines 12 and 21 of paragraph VI?

Mr. Platt: It is the last paragraph in paragraph VI.

The Court: I would like to have it stated, that amendment.

Mr. Platt: I think I can dictate it: "Further the [113] said plaintiff, at the request of the defendant, Irene Gladys Mapes, attempted to secure a large and appreciable loan for the said defendants to finance the construction of the said hotel building, which the said defendant, Irene Gladys Mapes, informed the plaintiff she was unable to successfully negotiate through other channels. That said plaintiff entered into such negotiations with financially responsible persons and was assured by them and plaintiff in turn assured Mrs. Mapes, that he was able to secure the loan."

The Court—That is the requested amendment. That, if it was granted, of course, would be like any

other allegation in the complaint, subject at the time of the taking of testimony to any objection as to admissibility of evidence concerning the same.

Mr. Cooke: We would like the record to show also, your Honor, that we object to it as incompetent in any event as an allegation, on the ground that it is entirely outside of the written agreement, that it is not pursuant to the statute which requires agreements of this sort to be in writing, that it is an attempt to change a written contract into an oral contract on acts specifically performed, that the allegation of the efforts of the plaintiff as to attempts to do certain things that are not accomplished is irrelevant and immaterial as to performance. You have to show accomplishment.

The Court: I think all the objections raised in [114] that objection can be considered at the time testimony may be offered to prove these allegations. Permission will be granted to make the amendment and I suppose it can be done by adding a little rider to this paragraph or interlineation.

Mr. Platt: Well, in order to save time and I suppose not to unduly burden the record, I suggest a rider, your Honor, for a substitution.

The Court: If you will just prepare one and bring it in some time during the trial, we will attach it to the complaint. Now, is such an amendment going to embarrass the defendant or cause any change to make this amendment?

Mr. Cooke: No, sir, except we might want to change our answer after we see the written form of

rider that is going to be put on it. We want the privilege to amend our answer.

Mr. Platt: Certainly, we would have no objection. I might also add that the defendants have been duly advised, through the counter-affidavit promptly filed by Mr. Denson, the plaintiff, when he learned that she had negotiated a loan from other sources.

Then paragraph VII alleges that the plaintiff, in order to carry out the terms, conditions, and covenants of said agreement, by way of part performance thereof on his part, and all within the knowledge of said defendants, and each of them, this plaintiff obtained plans, specifications and prices from various firms on furnishings, equipment, accessories and supplies [115] to be installed in said hotel at the cost and expense of plaintiff and defendant, Chas. W. Mapes, Jr. Then we allege that as a further consideration for the agreement and relying upon the good faith of the defendants and with their knowledge, plaintiff sold at considerable financial sacrifice a hotel of which he was the sole owner and proprietor and we allege that good and valuable considerations in said agreement provided, are fair, just and equitable to said defendants and each of them.

Then in paragraph VIII we allege that the agreement was prepared by the attorney for the defendants and sent to the plaintiff by mail to Los Angeles, California, etc. In that connection, your Honor, I might state that we are not always in touch with the plaintiff because he lives in California and

the agreement was sent to Los Angeles where Mr. Denson was for his signature which accounts for the allegation in the complaint that he signed the agreement in Los Angeles and after the amended complaint was drawn, we learned that instead of signing it in Los Angeles when he received it, he came to Reno and went to Mr. Cooke's office and signed it there and paid the ten thousand dollars, so in order that that should conform with the facts, we ask the privilege of amending it so as to establish that fact.

The Court: Any objection to that amendment, Mr. Cooke? [116]

Mr. Cooke: Same objection, your Honor. We object to all this as material set up in the complaint.

The Court: Without prejudice to your privilege to raise any points on those motions, the amendment will be allowed and I think we can amend by the same method.

Mr. Platt: Yes, your Honor.

The Court: I think you had better state it so the record will be clear as to just what it is, so comparison can be made then with the rider.

Mr. Platt: Well, I propose, if the Court please, that the rider provides as follows: "Par. 8. That said agreement, Exhibit A, was prepared by the attorney for defendant, executed by the said defendants, Irene Gladys Mapes and Charles W. Mapes, Jr., sent to the plaintiff by mail to Los Angeles, California, and later signed and executed by the plaintiff in the office of H. R. Cooke, attorney for the defendants, at Reno, Nevada."



The Court: Perhaps the term "as a rider" might not be exactly correct. You understand just what I mean.

Mr. Platt: And then to have the paragraph VIII go on, it is now alleged that since the execution of said agreement, plaintiff has always been ready and willing to receive from defendant, Irene Gladys Mapes, a lease of said hotel structure whenever tendered, or to join in the execution of such a lease, and defendants have been so informed and advised [117] by plaintiff. That will be paragraph VIII as amended, your Honor.

Then paragraph IX alleges in effect that the agreement provides that immediately the parties shall enter into a discussion with each other as to the terms, conditions and details of the lease and that said terms, conditions and details shall be mutually agreed upon between the parties herein within ten days after the written contract for the construction of said structure has been entered into by the first party and within ten days after the actual construction has been commenced and while there is a provision in said agreement that time is the essence thereof, this plaintiff alleges that the said defendants, by word, act and conduct upon the part of each and all of them, have waived said time provisions and with intention so to waive and with knowledge, understanding and recognition of such waiver, and each and all of them are estopped and foreclosed from disclaiming said waiver or asserting or claiming or relying upon said time provi-



sions, or any of them. Then the acts of waiver are set out. Repeatedly since the execution of said agreement and for a continuous period following the expiration of the time provisions hereinabove referred to, the said defendants, by word, act and conduct, have led this plaintiff to believe that such a lease would be tendered and would be properly executed by all of the parties hereto, and plaintiff placed full reliance on defendants' said word, acts and conduct. That almost continuously from the 24th day of September, 1945, the date of the execution of said agreement, up to and including the 1st day of April, 1946, all of the parties hereto have been conferring at various times and intervals and have treated and considered during all of said period of time said agreement to be continuous in full force and effect, with the belief on the part of the plaintiff and representation by said defendants that they were acting in good faith and would tender and execute said lease. On or about the 28th day of December, 1945, plaintiff, at the request of the defendants, met the defendant Charles W. Mapes, Jr., at the office of the architect of said hotel building in Oakland, California, for the purpose of discussing some changes in the plans of said building. During the month of March, 1946, plaintiff conversed by phone between Los Angeles and Reno with the defendant, Irene Gladys Mapes, about the hotel and the plans therefor. Plaintiff also told her that he would call the defendant, Charles W. Mapes, Jr., the next day and ask him to come to Los Angeles to look over plans for the

furniture and interior decorating. Later, by appointment between the plaintiff and defendant, Charles W. Mapes, Jr., plaintiff met the said defendant on or about April 1, 1946, together with an interior decorator of Barker Bros., Los Angeles, California, at the office of the architect of said hotel structure in Oakland, California. During the first part of January, 1946, [119] plaintiff went to San Francisco and interviewed the Dohrmann Hotel Supply Company and instructed said company to get out plans for the new equipment, designs and prices for dining rooms, kitchens, bars, and other matters appertaining to hotel equipment, all of which these defendants well knew. That in the same month of January, 1946, plaintiff came to Reno and conferred with the defendant, Irene Gladys Mapes, at her home in Reno, Nevada; that upon said interview the said defendant Irene Gladys Mapes, expressed pleasure with the progress being made.

Then we allege in paragraph X that during the period of time from September 24, 1945, which was the date the contract bears, up to and including about the 10th day of April, 1946, the said defendants retained plaintiff's ten thousand dollar cash deposit and never once during that interval of time offered to return it, nor did any one of said defendants during that interval of time, by word, act or conduct, lead this plaintiff to believe that said agreement would be repudiated and that they would not enter into and execute the lease as said agreement provides.

Then in paragraph XI it is alleged that in further recognition of the waiver by defendants of the time element hereinabove set forth and the estoppel herein, the said defendants caused to be published in local newspapers and trade journals featured and prominent illustrated articles, stating that plaintiff would conduct and operate said hotel.

Then it is alleged in paragraph XII that a lack of observance and performance of the time elements in said agreement above referred to was the fault of the said defendants and not of this plaintiff; that though plaintiff told defendants he was ready to sign a lease whenever they should prepare and submit it, no form of lease was ever tendered plaintiff by defendants, or any of them; that though the defendants had superior knowledge as to when final plans of said hotel structure were approved and when actual construction commenced, yet none of them disclosed said facts to this plaintiff, nor was an interview or conference sought for the final preparation of the lease. And it further alleges that said defendants, and each of them, are and were at fault and were neglectful and delinquent in not seeking or arranging such an interview or conference within any of the periods of time set forth in said agreement.

Then in paragraph XIII it is alleged that all the material and essential provisions of the proposed lease were and are expressly stated and set forth in said agreement as hereinabove more particularly alleged and the parties hereto expressly

agreed that such material and essential provisions should be contained within said lease; that all other customary matters and things usually contained in similar leases were and would be merely incidental and in accordance with [121] custom and usage.

Then paragraph XIV alleged that notwithstanding the continued acts, conduct and representations of the defendants as above set forth, and notwithstanding the binding obligations of said agreement and the ability of the defendants to perform, the said defendants personally, and through their attorney, on or about the 10th day of April, 1946, without cause or reason, repudiated said written agreement, declined and refused further performance on their part under it, and stated to plaintiff that no lease would be tendered, granted or entered into as said agreement provided. That no cause or reason was given plaintiff for such repudiation.

Paragraph XV alleges that plaintiff has fully and faithfully performed all acts and things, covenants and conditions in said agreement required of him to be performed, and has always been ready, willing and able, and is now ready, willing and able to enter into and execute said lease, as in said agreement provided, and fully and faithfully to perform in accordance therewith, and to comply with all of its terms, covenants, agreements and conditions.

Paragraph XVI alleges that it was at the special instance and request of the defendant, Irene Gladys Mapes, that her son, Charles W. Mapes, Jr., was

associated with plaintiff as a second party to said agreement. That plaintiff reposed sufficient faith and confidence in the said Charles W. Mapes, [122] Jr., to believe that he would faithfully carry out his obligations under said agreement and join with plaintiff in demanding and executing the lease, as in said agreement provided, but the defendant, Charles W. Mapes, Jr., has wrongfully, unjustly and inequitably, and in fraud of plaintiff's rights, conspired and confederated with his co-defendants in repudiation of said agreement. That plaintiff has always been ready, willing and able, and is now ready, willing and able, personally to assume, pay and perform in full all obligations, acts, or things required to be performed by the said defendant, Charles W. Mapes, Jr., under said agreement and lease, and to take and execute said lease in his own name.

Then we allege that plaintiff has no plain, speedy or adequate remedy at law.

We further allege that defendants have not done equity nor have they offered to do equity, and then we pray for a decree and the prayer is that a decree for specific performance of said agreement be made and entered into herein in favor of the plaintiff and against the said defendants. That the above-entitled court order a decree that within 20 days from and after the entry of said decree, or such other time as the court may determine, that said parties hereto be ordered and directed to execute and give a sufficient lease upon the hotel prop-



erty, with the exception of eight stores spaces on Virginia Street and three store spaces on First Street herein [123] particularly described, for a term of 20 years and for a rental price, consideration and conditions as in said agreement provided. That said lease shall provide that the plaintiff and defendant, Charles W. Mapes, Jr., at their own cost provide and place in said structure such furniture, fixtures and equipment as shall be suitable, proper and necessary to furnish and equip the same as a first-class hotel and apartment building, and that they shall execute and deliver to the defendant, Irene Gladys Mapes, a first chattel mortgage on said furniture, fixtures and equipment, and to be provided in said lease. That the court further order, adjudge and decree such other and additional provisions to be contained in said lease as to fully effectuate the intent and purposes of the parties hereto, as in said agreement stated, and also set forth all usual or necessary conditions to the end that the rights and interests of each party shall be properly conserved and protected. That the court further order, adjudge and decree, as an alternative, that if sound principles of equity would be best subserved and applied herein, that the plaintiff, solely and on his own behalf, and the said defendants execute said lease, as aforesaid, without the joinder of the defendant, Charles W. Mapes, Jr., as co-lessee therein. That the court retain jurisdiction herein to assure compliance with its orders, judgments and decree, and for such other relief as



in equity may be mete and proper, and for costs. Does your Honor desire the agreement read?

The Court: It might be well to consider that.

Mr. Platt: It is attached to the amended complaint. The agreement is as follows: (Reads agreement.)

The Court: Do attorneys for the defendants desire to make any statement?

Opening Statement of Mr. Cooke

Mr. Cooke: Possibly I can narrow this down somewhat by stating substantially what is really at issue in the case. There are considerable allegations set up in the amended complaint which we do not deny, many of them are denied, some denied with an explanation and so on. Primarily, it is the position of the defendants in this case that this action must be determined by reference to the written document alone and that it cannot be twisted around with allegations or evidence or materially changed in any respect as proposed. We have made objections, and we will continue to make objections throughout to the admission by the court to any evidence of these various telephone conversations and these bits of talk here and there had between the parties, as having any bearing upon how your Honor should construe the written document. That document must be allowed to speak for itself and as a matter of law it does not concede a contract to be specifically performed, or a contract at all,

because it says on its face that the parties never met on the particular conditions.

Now paragraph I of the amended complaint, which [125] alleges jurisdictional matters, in part is admitted, that is to say the citizenship and the amount of controversy, but we find an allegation there that Charles W. Mapes has declined and refused, and still declines and refuses, to join the party plaintiff therein; that he is a son of the defendant, Irene Gladys Mapes, also known as Mrs. Charles W. Mapes, that particular portion of paragraph I in the amended complaint is admitted, but then follows this: “\* \* \* and has conspired and confederated with the said defendants, Irene Gladys Mapes, Gloria Mapes, and said co-partnership, to defeat the said plaintiff out of his just rights and equities herein.” That is denied.

Then paragraph II, which alleges that the defendant Charles W. Mapes Company, a co-partnership, was organized on or about the 9th day of November, 1943, and ever since has been and now is conducting, carrying on and transacting business and has never since been dissolved, is admitted.

Paragraph III alleged that at the time this document of September 24, 1945, was executed Irene Gladys Mapes was seized in fee of the property therein described, consisting of an area on Virginia Street of 167.64 feet, is admitted, with the exception that 12 feet in controversy should be deducted therefrom. It is 155.64 feet on Virginia Street that she was seized in fee of and not the amount stated

in the instrument. I might interpolate here that the 12 feet which she was seeking at that time to acquire from the City of Reno was by the city [126] council, after repeated efforts on the part of Mrs. Mapes, refused, the council apparently deeming it should be held as part of the street instead of being conveyed to Mrs. Mapes.

Then paragraph IV of the amended complaint sets up that on or about November 6, 1945, Mrs. Mapes conveyed by deed of conveyance to herself, Charles W. Mapes, Jr., and Gloria Mapes, co-partners, doing business under the name of Chas. W. Mapes Company of Reno, Nevada, the real estate described in the agreement of September 24, 1945. That is admitted. Then it is alleged that said conveyance, at the time of its execution and prior thereto was made with the knowledge by all of the defendants of the existence of said agreement. That last clause is denied. It goes to the question of Gloria Mapes, who acquired the property, one-third interest in the property, after September 24, 1945, whether she had knowledge of the alleged agreement and arrangement and so on with Mr. Denson. Of course, there is no question but what the defendants, Charles W. Mapes and Mrs. Mapes, knew of the arrangement and agreement, but the issue there is as to Gloria Mapes.

Paragraph V of the complaint alleges that on the 24th day of September, 1945, the above named plaintiff and above named defendants, Irene Gladys

Mapes and Charles W. Mapes, Jr., entered into a written agreement whereby the defendant, Irene Gladys Mapes, agreed to grant a lease to said plaintiff and [127] said defendant, Charles W. Mapes, Jr., of a certain new fireproof hotel, apartment building, and so on. That is denied by reason of our construction that this agreement of September 24, 1945, was merely a preliminary agreement that was substantially the same as talks and discussions of what the written agreement, later to be executed, would contain, and that it of itself was not an agreement for a lease binding upon either of the parties, either Mr. Denson or Mrs. Mapes, so we deny that there was any agreement that we grant a lease. Of course, the document speaks for itself. We agree that we may later and have certain discussions and agree upon a lease if we can, that is the language of the document, and further that no lease should be effected in any event until plans and specifications had been agreed upon, and those were never agreed upon, so that is the reason of that allegation. Of course we admit the physical act of signing that particular paper, but whether it is the kind of agreement that they allege here is entirely another matter. We deny that said agreement is certain or definite or just or reasonable or mutual in its obligations or in all of its material parts. That to my mind, with my knowledge of pleadings, is improper and incompetent. The document must be allowed to speak for itself and to say that a document is valid and legal in your pleading is not necessary and takes up that

much space, that is my view of that, so we deny that it is either certain, definite, reasonable or just. It is immaterial and those are matters, of course, I think, of [128] law that would be subsequently taken up and concerning which we believe we are entirely prepared to justify our position to the court.

The rental consideration is alleged and that already appears in the document itself and it does not appear to me what avail or benefit to the court, or to anybody, to set up that again, but they state the same things in this paragraph as to terms of agreement as in regard to the gross receipts as stated in the agreement itself, and of course we admit that document contains those provisions with reference to the percentage of the receipts to be paid as rental, and they allege that the written agreement expressly acknowledges valuable and consufficient consideration present and received, and that is another allegation that I submit is subject to the criticism I have made and we will hear more from it later on probably, but we have admitted that the written document does contain the things that they say.

Paragraph VI, first paragraph is subject to our legal objection as to materiality and propriety of that type of pleading being injected into the case. We deny that the plaintiff, at the request of the defendant, Irene Gladys Mapes, engaged the architect and contractor now constructing the hotel building on said premises and as to whether he



conferred upon many or any occasions with the architect or with the contractor employed on the work or with the members of their official [129] staffs, or as to whether the plaintiff expended the necessary or any time or expense for attendance upon said conferences, that we have no information or knowledge with respect to that matter sufficient to base a belief. As to conferences with the defendant, we deny the allegation as to that. Further it says in this same paragraph: "The said plaintiff, at the request of the defendant, Irene Gladys Mapes, secured a large and appreciable loan for the said defendants \* \* \*," etc. Well, we have had a statement from counsel as to that loan. We deny that he secured any loan, large or otherwise, to finance the construction of the hotel, and we deny that Irene Gladys Mapes was unable to negotiate through other channels this proposed loan. I might say here, in anticipation of the rider amendment, that the denial will go to that also and I think about the only change made was that the plaintiff made attempts to secure the loan and that he had assurance from financially responsible people that they would grant the loan and he so informed Mrs. Mapes, and we will deny all of that, except perhaps attempts, which we deny for lack of information or knowledge sufficient to base a belief that he made attempts.

Paragraph VII it is alleged that in order to carry out the terms, conditions and covenants of said agreement, by way of part performance thereof on



his part, and all within the knowledge of said defendants and each of them, this plaintiff obtained plans, specifications and prices from various firms, etc. That is denied for lack of knowledge or information as to whether he did these things or not. Naturally we do not have any definite knowledge about it. It is further alleged that as a further consideration the plaintiff, relying on good faith of defendants and with their knowledge, sold at a considerable financial sacrifice a hotel of which he was the sole owner and proprietor. That is denied in the same way, that we have no knowledge or information on which to base a belief as to the sale of the hotel at a sacrifice, considerable or otherwise. And it is alleged that good and valuable considerations, in said agreement provided, were and are fair, just and equitable to said defendants herein, and each of them. That is denied without any qualifications, being one of our contentions in this case that the agreement, as set up, providing for the payment of rental, if it were to stand as a lease for the 20 years, would be very far from being fair, reasonable and equitable to the defendants, in that it would not produce an income or rental that would be even one-half of what the fair, reasonable and equitable price should be. That, of course, is very material in these specific performance cases, because courts will not enforce agreements that are not in every respect fair.

Paragraph VIII it is alleged that the said agreement, Exhibit "A", was prepared by the attorney

for the defendants. We will have another amendment to that changing something [131] there with regard to where it was signed by the plaintiff, which doesn't materially change the sense and substance of the allegation. The allegation that the agreement, Exhibit "A", was prepared by the attorney for defendants it denied in part, the denial being to the effect that a document prepared by Mr. Denson and furnished by Mr. Denson was handed in and it was copied in substance, with some more or less slight additions so that it was in a sense a sort of a joint production of the attorney for the defendants and the document that was furnished by Mr. Denson, so it is correct to say that it was prepared by either, but three-fourths of it was prepared or furnished by Mr. Denson. That is how the agreement was arranged, as set up by the defendants. Then the balance of that is where it was signed, has been changed slightly, but we reserve the right to enter such denial as we think proper when the rider amendment is served.

Now it is alleged that since the execution of said agreement plaintiff has always been ready and willing to receive from the defendant, Irene Gladys Mapes, a lease of the said hotel structure when it was tendered, or join in the execution of such a lease, and defendants have been so informed and advised by plaintiff. The last clause, "and defendants have been so informed and advised by plaintiff," is denied by the defendants, at least up to the time of the filing of the suit. The answer sets

up more particularly the various steps [132] that that occurred preliminary to the final decision and notice that they would not execute any lease to the plaintiff. That as to the plaintiff being always ready and willing to receive from defendant a lease of the hotel structure we deny that for want of knowledge or information sufficient to base a belief. The testimony, I think, will clarify that as to the attitude of the parties and that Mr. Denson was requested to come to a settlement and agreement with regard to the lease that was foreshadowed by the agreement of September 24th and he refused to do so, that is to say, he failed and neglected to do the things necessary to get a meeting.

Paragraph IX alleged that while the agreement provides that the parties thereto shall immediately enter into a discussion with each other as to the terms, conditions, etc., they have ten days after the actual construction has been commenced, and it further provides that time is of the essence thereof. It then alleges that defendants, by word and act and conduct upon the part of each and all of them have waived such time provision. That is denied, that we have waived any. And that with intention so to waive and with knowledge, understanding recognition of such waiver, that is denied; "and each and all of them are estopped and foreclosed from disclaiming said waiver," that is denied, "or asserting, or claiming, or relying upon, said time provisions or any of them," that is denied. We certainly intend to rely upon the time provisions

and to put in the evidence that we are entitled and justified in relying on that. Then it is stated that repeatedly, since the execution of said agreement and for a continuous period following the expiration of the time provisions referred to the said defendants, by word, acts and conduct have allowed the plaintiff to believe that such a lease would be tendered and would be properly executed by all the parties hereto, and plaintiff placed full reliance upon such words, acts, and conduct. That is all denied and subject to our objection that it is wholly and vitally defective and insufficient, does not state any facts. And then they go on "That almost continuously, from the 24th day of September, 1945, the date of the execution of said agreement, up to and including the 1st day of April, 1946, all of the parties hereto have been conferring at various times and intervals," that is denied, with the qualification that there were some informal conferences and that shortly after the 1st of April, 1946, the defendants demanded that the plaintiff come to a conference for a final settlement of the whole question of whether a lease should be granted or should be agreed upon, it being their position that the lease that was suggested and foreshadowed by the agreement of September 24th was out, but they were willing nevertheless to discuss with him the granting of a lease on the property down to April 10, 1946, and he refused to come and said he had an agreement that was sufficient for him and was going to have that [134] specifically enforced, etc., and so on, and that was the end of it. Now it is alleged

that the defendants had considered during all of said period of time the said agreement was in continuous full force and effect, with the belief on the part of the plaintiff, and representation by the said defendants, that they were acting in good faith, and would tender and execute said lease. That is also denied, except with the qualification I just stated, that at no time as mentioned there, namely in the late spring of 1946, did the defendants ever make any statement or representation of any kind to the plaintiff that they would execute a lease along the lines of the one mentioned in the September 24, 1945, document, that if there was going to be a lease it would be a brand new document and upon such terms and conditions as the parties might then elect. Then it is alleged that "on or about the 28th day of December, 1945, plaintiff, at the request of defendants, met the defendant, Charles W. Mapes, Jr., at the office of the architect of said hotel building in Oakland, California, for the purpose of discussing some changes in the plans for said building;" that is denied. "During the month of March, 1946, plaintiff conversed by phone between Los Angeles and Reno with the defendant, Irene Gladys Mapes, about the hotel." There was a conversation admitted by the defendants. It was in March, but it was after March 18th. "\* \* \* and the plans therefor." And the allegation continues: "Plaintiff also told her that he would call the defendant, Charles W. Mapes, Jr., and ask him to come to Los Angeles to look over plans for furniture and interior decorating." That is denied. There was no



such talk between Mrs. Mapes and the plaintiff. "Later, by appointment between plaintiff and the defendant, Charles W. Mapes, Jr., plaintiff met the said defendant on or about April 1, 1946, together with an interior decorator of Barker Bros., Los Angeles, California, at the office of the architect of said hotel structure in Oakland, California." That is denied. Then it is alleged that during the first part of January, 1946, plaintiff went to San Francisco and interviewed the Dohrmann Hotel Supply Company and instructed said company to get out plans for new equipment, designs and prices for dining rooms, kitchens, bars and other matters appertaining to hotel equipment, all of which these defendants well knew. As to whether he went to San Francisco and interviewed the Dohrman Company as alleged, we say that we have no knowledge or information sufficient to base a belief, so we are not denying absolutely that that was done, but only in a legal sense and in a legal manner that we had any knowledge of his going to interview the Dohrmann Hotel Supply Company as stated whatever. Then it is alleged in the same month of January, 1946, plaintiff came to Reno and conferred with the defendant, Irene Gladys Mapes, at her home in Reno, Nevada. The fact that he came here is admitted. "That upon said interview the said defendant, Irene Gladys Mapes, expressed pleasure [136] with the progress being made." That is denied.

Then the next paragraph of the amended complaint sets up that during the period of time from



September 24, 1945, the date of the execution of said agreement, up to and including about the 10th of April, 1946, the said defendants retained plaintiff's \$10,000 cash deposit, never once during that interval of time offered to return it, nor did any one of said defendants during that interval of time, by word, act or conduct, lead this plaintiff to believe that said agreement would be repudiated, and that they would not enter into and execute the lease as in said agreement provided. That is all denied, with the exception that the deposit that is made—I will have to turn to the answer to find out exactly what we did say about that, but the defendants aver in their answer, as I recall, that they knew in advance that the deposit wouldn't be accepted, the return of it wouldn't be accepted. Further, a return of the money was tendered and was refused, but I think possibly I will have to get the exact dates which we set up in our answer.

Paragraph 11 alleged that “\* \* \* in further recognition of the waiver of defendants of the time element hereinabove set forth and the estoppel herein, the said defendants cause to be published in local newspapers and trade journals, featured and prominent illustrated articles stating that plaintiff would conduct and operate said hotel.” That is denied. It is not [137] clear to the defendants just how the plaintiff is setting up before this Court a denial on his part that a contract was made admittedly to himself and one other party should be reconstructed and changed by the Court and made to run to him

alone. That is going to be a sharp issue in the case, as to whether this Court can consider the form of any agreement other than the one the parties made. If your Honor finds an agreement was made here, it is the position of the defendants that your authority and power is limited to that particular document, which must be in writing under the statute, unless there is some proposition under operation of the law brought legally into the case, and that this allegation here that the defendants caused publication to state that the plaintiff alone was to operate the hotel, is not evidence of any agreement entered into between the plaintiff and defendants.

Now paragraph 12 alleges that lack of observance and performance of the time elements in said agreement was the fault of the said defendants and not of plaintiff. We deny it however. "That though plaintiff told defendants he was ready to sign a lease whenever they should prepare and submit it \* \* \*." We deny he ever told us he was ready to sign any lease whenever submitted. We admit no form of lease was ever tendered him by the defendants or any of them. Plaintiff alleges: "That though the defendants had superior knowledge as to when final plans for said hotel structure were approved and when actual construction commenced, yet none of them disclosed said facts [138] to this plaintiff \* \* \*." That is denied, that is to say, we deny that we had any superior knowledge as to when the hotel structure was actually commenced to be constructed, that the plaintiff knew about that par-

ticular fact as much as we did. Then it is alleged that we didn't seek an interview with the plaintiff or conferences for the final preparation of the lease. That is denied as to a lease, not particularly as to the one referred to in the September 24th agreement. The plaintiff further alleges that said defendants and each of them are and were at fault and were neglectful and delinquent in not seeking or arranging such an interview or conference within any of the periods of time set forth in the agreement. That is what I would call another incompetent and immaterial pleading, but anyway we deny it.

Thirteen, it is alleged that all the material and essential provisions of the proposed lease were, and are, expressly stated and set forth in said agreement, as hereinabove more particularly alleged, and the parties hereto expressly agreed that such material and essential provisions should be contained within said lease. That all other customary matters and things usually contained in similar leases were and would be merely incidental and in accordance with custom and usage." We have denied that and we set forth what we consider to be material and essential matters for a lease of a building to cost a million and a half or thereabouts and run for 20 years [139] would be and I will call your Honor's attention to this a little later on, but we have denied the allegation in the form it is made.

Paragraph XIV it is alleged that "\* \* \* notwithstanding the continued acts, conduct and represen-

tations of the defendants, as above set forth, and notwithstanding the binding obligations of said agreement, and the ability of the defendants to perform, the said defendants personally and through their attorney, on or about the 10th day of April, 1946, without cause or reason, repudiated said written agreement, \* \* \*” etc. We have denied that “notwithstanding \* \* \* obligations.” Of course, we deny there were any binding obligations. We admit the ability of the defendants to perform. We deny that the defendants personally and through their attorney, on or about the 10th day of April, 1946, without cause or reason repudiated said written agreement. Of course, that is on the basis there was nothing to repudiate and the document speaks for itself. “\* \* \* and that they declined and refused further performance on their part,” that is denied with some further argument that will be disclosed by the answer. “\* \* \* and stated to plaintiff that no lease would be tendered, granted or entered into, as in said agreement provided.” That is admitted as of the date approximately the 10th day of April, 1946. “That no cause or reason was given plaintiff for such repudiation.” That is denied. [140]

Fifteen, the allegation is that plaintiff has fully and faithfully performed all acts and things, covenants and conditions in said agreement required of him to be performed, and has always been ready, willing and able, \* \* \*” etc. That is all denied. We never made any agreement to give any lease to

Mr. Denson alone. However ready and willing he is individually, that is not a performance of the agreement.

Paragraph XVI alleges that it was at the special instance and request of the defendant, Irene Gladys Mapes, that her son, Charles W. Mapes, Jr., was associated with plaintiff as a second party to said agreement. That is denied without qualifications and without any strings, and then it is alleged that the plaintiff reposed sufficient faith and confidence in the said Charles W. Mapes, Jr., to believe that he would faithfully carry out his obligations under said agreement and join with plaintiff in demanding and executing the lease, as in said agreement provided. We deny that for lack of knowledge or information upon which to base a belief as to whether plaintiff reposed confidence and faith in his alleged co-tenant, Charles W. Mapes, Jr. Then follows the allegation, "But the said defendant, Charles W. Mapes, Jr., has wrongfully, unjustly and inequitably, and in fraud of plaintiff's rights, conspired and confederated with his co-defendants in repudiation of said agreement." That is denied. It is a mere conclusion without a statement of a single fact upon which it is based. Then follows the further [141] allegation, "That plaintiff has always been ready, willing and able, and is now ready, willing and able personally to assume, pay and perform in all obligations, acts, or things required to be performed by the said defendant, Charles W. Mapes, Jr., under said agreement and



lease, and to take and execute said lease in his own name." There again we have the remarkable proposition that this Court is to execute an agreement and require the defendants to specifically perform something that they never agreed to.

Paragraph XVII alleges that he has no plain, speedy or adequate remedy at law. That is denied upon the hypothesis that he is not entitled to any remedy whatever. He hasn't been hurt.

Paragraph XVIII alleges that defendants have not done equity nor have they offered to do equity. We deny that also.

Now turning to the answer to the amended complaint, which has been gone over rather fully, but there is some portion of it I want to call to your Honor's attention. We have set up special defenses and the first one is as follows: (Reads I from Answer). The second affirmative defense reads as follows: (Reads II from Answer). For a further and third defense it is alleged: (Reads paragraph (1) under third defense). That may possibly be answered by the proposition as suggested by Mr. Platt on oral argument, that the lease be a [142] personal and private relationship of a confidential character, which would prevent it being assigned, irrespective of there being any clause against assignment, but in order to make assurance doubly sure in the lease for that long period of time and where the parties thereto might pass away from the scene before the expiration of the lease, there usually are, I would say and necessarily are, pro-



visions as to what shall be done, whether the lease shall pass to the successors in interest or whether it shall terminate or whether it may be assigned, etc. Now that is (1). Second (reads 2). That is another clause that would be very material to the lessees so as to cover transfer of title or cover transfer of possession, substitution of parties that the lessors might not be willing to have in there for a minute. They might be entirely willing to have Mr. Denson and Charles W. Mapes in there, but would not be willing to have John Brown or John Doe in there as receivers or as assignees or as legal representatives in case the lessees died. That is a clause that I say is essential to a lease of that long period of time. For a short period of time it wouldn't be so important.

Then a clause we say should go into that lease and should contain matter and provisions, etc., to protect the rights of the parties, that should be a clause that required the lessees to keep true books of account and give lessor right of free inspection and audit. Your Honor will recall from [143] reading the agreement that the method of their paying rental is a percentage of the gross sales, so that in that respect the lessees and the lessors are in a sense benefactors. It is true that the percentage is fixed, but payment to the lessors is fixed in respect to business by the lessees and lessors would be vitally interested in knowing that accounts were correctly kept in order to know that the correct rental was accounted for by the receipts, so that is absolutely

necessary in a lease of this kind, that they not only have the right to know that true books were kept, but also the right of inspection at all reasonable times and have them audited.

As to the 4th proposition set up in their answer, there is a clause in the lease that the lessees agree to pay a rental that will take care of the amount requited for the payment of taxes by the lessors on this building, and also an amount for upkeep on the building and also for insurance on the building and also for the interest on the money borrowed by the lessors and also for an amount annually for the amortization of the cost of the building. That is a firm and definite provision of the agreement, so we say that the lease, if and when one was prepared, would necessarily have to specify and clarify more fully than this preliminary document did, because it contained nothing as to the details. The lease would have to provide something about the amount for insurance, something for each of these items. It says borrowed money, it [144] does not say whether money borrowed on the building or borrowed for other purposes, and there is no method by which this Court or anybody can take September 24th agreement and determine what the minimum guaranty rental would be under that clause. At least that is our contention, so we say as to the fourth objection or rather clause, that we think should go into the lease for the protection of the parties as provided hereby, a clause or clauses that clarify this Paragraph 9 of the exhibit which contains the items that are mentioned.

Another one specified as (5) is as to what should constitute suitable, proper and necessary fixtures and equipment and whom, if any one, shall have power of determining in case the parties are unable to agree. Your Honor will recall that there is one paragraph in the September 24th document that provides that Mr. Charles W. Mapes and Mr. Denson, the plaintiff, should purchase, at their own expense, and install in the hotel furniture suitable and necessary for a first-class hotel and the cost should be \$150,000 or not less. That leaves open, as we see it, a question that would necessarily have to be determined in the lease itself as to what kind of furniture should be installed. To simply say \$150,000 worth of furniture to furnish and equip a first-class hotel——

Mr. Platt: It does not say that. I beg your Honor's pardon. The agreement does not say that the amount is to be \$150,000. The agreement says as "now estimated." The agreement [145] provides that sufficient money shall be expended by the lessees as to suitably and properly furnish the hotel and \$150,000 is only inferred the minimum amount.

Mr. Cooke: I think that is a difference between twiddle-tum and twiddle-dee. That is the figure they had in mind, \$150,000, but whether it is that figure or more or less is not the point I am talking about. The point I am talking about is who is going to determine the furniture that is suitable and necessary. How is your Honor going to do it granting a decree of equity? There is nothing in the September 24th agreement that pertains to that subject at all, so that would be a standard proposi-

tion right there. That is our idea at least, your Honor, in setting up this objection.

Paragraph 6, your Honor will recall that in the agreement there is a rather peculiar provision, the garage which your Honor was asked to decree particular performance on and which it seems to us you would have to reach out into thin air in order to make any decree at all. If the lease is to include the garage, your Honor will note that this agreement here apparently does not include it, but they say if the lease shall include the garage, then the second parties shall pay monthly 10% of the gross garage receipts or, if the first party leases the garage to a third person, the second parties are to have the privilege of garage service for their guests on terms to be mutually agreed upon. The first part of that, "10% of the gross garage receipts" can be developed so far as certainty and definiteness is concerned, but the clause there that that if the lease is to contain the garage at all, is certainly indefinite. Your Honor couldn't make a decree, it seems to me at least, that the lease was to include that because the parties left that open but the clause of that determination, "if the first party leases the garage to a third person, the second parties are to have the privilege of garage service for their guests on terms to be mutually agreed upon," that, of course, means that they should get together later on and find out what terms would be applied. It is not a case where the Court can instruct an agreement for that, because the Court might miss it a mile. That is reserved, as we see it, for the purpose of being agreed upon later on. It is not foreshadowed in

any way by the September 24th agreement, so we set up then in our answer that is one of the things that are material and would be material and necessary in the lease if and when one was executed. Counsel for the plaintiff, I think, undertook to dispose of that clause in the oral argument—it was a small, little thing to talk about, this being a lease for 20 years and running into big money, and so forth, but we expect that isn't the reason. The parties didn't think so because they specifically refer to it in their argument and it was reserved for further agreement and the garage privileges to a hotel such as this structure is under course of construction [147] under a period of 20 years, I would say it can not be disposed of in any haphazard manner as that.

Now we have 7. 8 and 9, which purport to provide chattel mortgage to be given for security of rental payments, and we think if a lease would be drawn, it would be necessary to particularize as to the conditions under which it should operate for warranty of rental payments. You have to take into consideration the paragraph in regard to percentage, you have to take into consideration the paragraph in regard to taxes, upkeep, insurance, interest on borrowed money and amortization. Those items would be supposed to be secured by the chattel mortgage, as it would be if the lease was drawn, and counsel would work the thing over carefully as they would on a long term document, they would be able to particularize that to the satisfaction of the parties, but that is not there entered and that is one of the



vital shortcomings of the document we have here now as a 20-year lease.

The next paragraph is a clause that ought to be necessarily in leases as to the nature of non-compliance. Some leases, for instance, might provide that in case of non-compliance the lessor should serve 15 or 20 days' notice on the lessee to correct default within that time and other matters notice probably longer or shorter, also there should be a provision in the lease that in the event of default it is mutually understood time is of importance, because in a long-term [148] lease, where there are a multitude of things to be done on the part of the lessees, there will delays occur many times, defaults or claimed defaults, and there ought to be some specific provision guiding the parties in determination of the question, so we say that this is a necessary provision that should be in the lease.

Then a further one is that the lessees shall comply with the laws of the State and with local ordinances, statutes and regulations. A lease of this kind would be governed by the local ordinances and regulations of the health department, sanitary officials, etc., and this says, as we see it, that a lease of this kind on that kind of property should contain very specific clause to the effect that the lessees should at all times comply with those requirements and that a failure to comply would operate as a default if the lessors wanted to claim it, that they could enforce it by calling for performance or claiming a defaultage and another clause that is common in leases of this



type is the one indemnifying the lessors against damage to the lessor or other tenants resulting from overflow or breakage of water or sewer pipes or damage from leakage. Take in small buildings those questions frequently arise as to who is to pay it, the landlord or tenant and we feel there should be a specific clause to cover that, so there will be no controversy over what should be done. "Lessor not to be liable for damages caused lessees by reason of any acts [149] of other tenants of the building." That is another clause that we find in the books and we find in our own experience very frequently, not invariably but frequently and almost invariably and at least in a lease of any size, is inserted at the request of the lessor so he will not be held responsible for the neglect or negligence of other tenants. So in this building, we know that the stores on the ground floor will be occupied by parties who are not under this lease at all, they are excepted from this arrangement here with Mr. Denson; now if those parties did anything that injured Mr. Denson, it would be a question there as to who would be responsible as between the lessor and the lessee, Mr. Denson, so that that ought to be covered.

Then the further clause in regard to the charge of public utilities, such as heat and light and power and water and all that sort of thing. Failure on the part of the lessee to take care of those items would be a very important item, whether if he does not take care of it, constitutes a default. If it isn't in the lease, however, it wouldn't be a default, as I view it.

"13. Lessees to keep leased premises in repair and whether or not additions or improvements made by lessees are to remain on the property at the end of the term." That is an essential clause in all leases, both long-term or short-term, particularly long-term, and 14 is one that may or may not [150] be particularly important to the lessor. Those are some 14 propositions that we thought important enough to set up as clauses and we think frankly counsel for both lessee and lessor would insist upon being incorporated in some form or other in a final lease to be drawn covering this period of 20 years.

(Noon recess taken.)

2:00 P.M.

All attorneys present as at morning session.

The Court: Are you ready to proceed gentlemen?

Mr. Platt: Yes, your Honor, ready for the plaintiff.

The Court: Mr. Cooke?

Mr. Cooke: I think before the recess was taken I was finishing with statement as to defendants' third defense which set up the various things that the defendant contends would necessarily be included in a lease. The 4th defense reads as follows: (Reads (a) 4th defense in Answer.) The allegation as to the commencement of the work is not entirely clear. The demolition of the building, I think, was commenced on November 10, 1945, and that continued and funds were obtained for the construc-

tion of the new building and work pursuant to the plans, etc., for the new building was commenced on January 25, 1946, so you have a question there as to whether the demolition work was construction work or whether it wasn't. (Reads balance of 4th defense.) [151]

The 5th defense reads as follows: (Reads 5th defense.) That is where it is alleged on account of her son, Charles, being taken in on the deal that she is willing to consider Mr. Denson as co-lessee. That is the 5th defense.

The 6th defense is as follows: (Reads 6th defense.) Your Honor will recall there are two minimum rental provisions in the talk, one being arrived at by certain per cent of the gross proceeds, another is a guarantee that the amount to be paid will be sufficient to pay the taxes and upkeep and interest, etc., so that the two are substantially the same, but there is another fact there that may be kept in mind, is that the second guaranty refers to the entire building and the entire building contains, as we know, some 11 stores on the ground floor and what the plaintiff is undertaking to do there by that paragraph in the proposed lease would be to guarantee that income from the 11 stores and then an amount to be paid from the lessees to the lessor for the hotel part of the building would be sufficient, all taken together, to take care of upkeep and taxes and insurance and interest and so on, and also provide for amortizing the cost of the building. "That

the fair and reasonable net rental for said premises under the same conditions as to time, not including the said 8 store spaces on Virginia Street and 3 store spaces on First Street, would be not less than \$25,000.00 per month, and inclusive of said store spaces, the fair and reasonable net rental would be not [152] less than \$30,000.00 per month." So according to that, the amount that is guaranteed is about one-third of the amount that the property will reasonably bring, according to the allegations. "That as defendants are informed and believe and so allege the fact to be, the cost of placing in said hotel structure such furniture, fixtures and equipment as should be suitable, proper and necessary to furnish and equip the same as a first class hotel and apartment building will be at least \$300,000.00, and not \$150,000.00 as mentioned in Paragraph 4 of said Exhibit A." That is the 6th defense, and the prayer of the defense is: (Reads prayer.) Signed by counsel.

The answer made is in considerable detail by reason of meeting, or endeavoring to meet, the case made by the plaintiff outside of the written document as to these alleged violations, what was said and done or not said and done, but it is our contention, your Honor, that the whole case must necessarily depend on the written document and that collateral matter, as pleaded on both sides, is irrelevant and immaterial. [153]

P. G. DENSON

the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Platt:

Q. Will you state your full name please?

A. Peter G. Denson.

Q. You are the plaintiff in this action?

A. I am.

Mr. Cooke: If the Court please, at this time I take it that it is the intent of the plaintiff to offer evidence in support of their complaint. I wish to make an objection to the admission in evidence of any evidence, oral or documentary, other than the September 24, 1945, document, upon the following grounds:

(a) That the plaintiff's amended complaint affirmatively shows that the plaintiff never had, or has up to now, any cause of action for relief, in that the September 24, 1945, document never became a valid contract, in that no discussion of terms or proposed lease was had within ten days or as therein expressly provided for;

(b) That said Exhibit A never became a contract, in that it purports to be merely a memorandum of a preliminary arrangement for the parties to later enter into a formal agreement, including many covenants and agreements not mentioned in said Exhibit A.

(Testimony of P. G. Denson.)

(c) It affirmatively appears that said Exhibit A was not intended by the parties thereto to constitute any binding or enforceable agreement.

(d) That said Exhibit A shows upon its face there was no meeting of the minds of the parties of the essential conditions of the proposed lease.

(e) That said Exhibit A calls for the construction of a large hotel building at the stated estimated cost of eight hundred thousand dollars and requiring over a year for construction and which, if specific performance were decreed, would require continuous supervision by the Court of said work and construction.

(f) That said Exhibit A is neither fair, reasonable or equitable as to the defendants in that the rental therein provided for would only amount to between nine thousand and ten thousand dollars per month, whereas the reasonable rental value of said entire hotel building would be not less than thirty thousand dollars per month.

(f) That is affirmatively appears that the plaintiff had not performed, or tried to perform, conditions in said Exhibit A as to deposit of 20 thousand dollars as a guaranty of good faith, as provided in paragraph 1, Exhibit A.

(h) Exhibit A is not sufficiently clear or definite so as to enable a court of equity to decree specific performance.



(Testimony of P. G. Denson.)

(i) That said Exhibit A affirmatively shows that it left material terms of proposed lease for future negotiations and hence no specific performance or any relief is available to plaintiff,

(j) Exhibit A is not a contract, either at law or in equity, in that the minds of the parties never met.

(k) Said Exhibit A provides inter alia that approval in writing by the parties of plans and specifications must be had before any lease on the premises shall become effective, and no such approval has been had.

(l) That said Exhibit A is unenforceable as to specific performance, in that mutuality of obligation and remedy is wanting and defendants could not compel plaintiff to operate or manage said hotel.

Those objections, if your Honor please, some of them were argued and presented at some length on the motion to dismiss some time ago, on which your Honor has ruled, and I do not want to take up any time with those and but very little time with the remainder, but because we do not at this time ask the court to hear us extensively in an argument, it is not to be taken as any evidence that we waive any of those objections or that we haven't full confidence in their legal correctness. It is a case, however, where the witness should be allowed to testify to whatever the Court rules is proper and then the

(Testimony of P. G. Denson.)

matters can probably be taken up later on. But we have two or three objections that are fundamentally upon the terms [156] of the contract, which your Honor recalls specifically provides in one place that the parties will agree, or at least they would meet and have discussion and agree if they can, upon a lease. The language "if they can" seems to be pregnant with quite a number of interesting legal consequences. Primarily it, of course, says that the parties at that time had not definitely agreed and we contend did not intend by Exhibit A to agree to bind themselves to a lease, simply anticipating more talk about this lease and agree if they can and we think that under the authorities a document purporting to be a preliminary agreement, such as this one was held to be, unilateral—they are held to be in fact no contract, because it is simply a memorandum the parties will do these things if they can agree, and that qualification, "if they can" is parenthetically the competent proposition in the contract, and here it appears that they couldn't and didn't.

The same basis is for our objection (d), that the exhibit shows on its face there was no meeting of the minds, no meeting of the minds on the essential conditions of the proposed lease. That goes to the clause where it is provided in that document that there should be in a lease, if one is finally agreed upon, such further conditions as were necessary for the conservation and protection of the rights of the parties, and naturally the conclusion would be from

(Testimony of P. G. Denson.)

that that the exhibit itself was not intended as a contract, when the [157] parties said they would later undertake to agree on one if they could and then they would include these other clauses that might be deemed at that time necessary. And the same argument applies to our numerical (e) of the objections that the exhibit shows upon its face there was no meeting of the minds of the parties of the essential conditions of the proposed lease. The essential conditions are the same on that as pointed out in those 14 specifications in one of the defenses, that the exhibit calls for construction of a large hotel building at a stated estimate cost of 800 thousand dollars, having a year or more to run for completion. That brings the case, or at least the objection is based upon that idea, it brings the case within the doctrine that a Court will not undertake the supervision of a building that requires continued looking after from time to time to see if the agreement is complied with. Here this agreement calls for construction of this building over here, estimated at 800 thousand dollars. Of course, the cost has gone very much in excess of that, but that was the estimated cost at the time and it was stated it would be finished about on or about January 1, 1947. Now if a specific performance were decreed at or about that time, or even now, we have under the terms of the contract considerable time to run, but I think that the time element there would be somewhere near with the time when construction

(Testimony of P. G. Denson.)

work began, which was in November or January, 1945 and 1946, so if the Court made a decree for specific performance, [158] we would have this picture, the Court sitting here and listening to evidence from time to time as to whether the contract was being carried out, because the decree would require Mrs. Mapes to go on and construct that building according to the plans and specifications agreed upon, if any, so if the building was not made as Mr. Denson thinks it ought to have been and he would come to, the Court and report to the Court they were not doing as the contract called for, and your Honor would have to render evidence and enter a decree and so on from time to time and it is with the view under the authorities that it is not the business of courts to enter into construction business or supervise construction, that contracts of that type will not be specifically enforced.

Then our ground (f) is one as to reasonable value of the rental as compared with what they agree to give. That depends upon the evidence in the case and it doesn't become a legal proposition in the case, and if, as we set up, the reasonable rental of the building is three times again what they agree to pay, then under all the authorities on that subject the agreement would be so unfair and one-sided that no court of equity would enforce it, regardless how definite and complete it might be in other respects.

Then paragraph (g) that it affirmatively appears

(Testimony of P. G. Denson.)

that the plaintiff has not performed, nor offered to perform, the conditions of said Exhibit A as to deposit of 20 thousand [159] dollars as guaranty of good faith, as provided in paragraph 1 of said Exhibit A. That objection appeared to me to be competent upon the proceedings as they are now because all we have here is our admission that the co-lessees, Mr. Mapes, Jr., and Mr. Denson, would put up 20 thousand dollars to Mrs. Mapes as guaranty of good faith and then it is alleged that ten thousand dollars, one-half, was put up by Mr. Denson but the other \$10,000 was never put up and that the contract was invalid in that respect, it is just as essential to put up the other ten thousand dollars and the putting up of \$10,000 is only 50 per cent performance. On a very vital, essential and important thing like that, it is not performance in equity or at law at all, so we assign that as a breach. That would seem to be admitted at that time, that is to say, it is admitted by there being no claim that anything more than ten thousand dollars was put up, whereas the agreement was to put up twenty thousand dollars.

Objection (h) the ground is Exhibit A is not sufficiently clear or definite so as to enable a court of equity to decree specific performance. That would be difficult in this case and it looms very large and if we have an opportunity to brief this case or make oral argument, we are prepared to submit your Honor a vast number of authorities



(Testimony of P. G. Denson.)

that we believe are squarely in point on that proposition. Of course, that includes the primary thing, that the agreement, to be [160] specifically performed, must be certain, clear and definite and that primarily is conceded by the plaintiff because he alleges in his complaint that this agreement A is certain, clear, complete and definite so they anticipated that one, but their allegation, of course, does not supply the facts and we say that the facts are wholly insufficient, fatally insufficient to show a definite agreement. We pointed out some of the things in which the contract is indefinite. Objection (i) affirmatively shows that it left material terms of the proposed lease for future negotiations and hence no specific performance or any relief is available to plaintiff. I think I have covered that already. Objection (j), Exhibit A is not a contract, either at law or in equity, in that the minds of the parties never met. That goes to the very root of the whole case, as to whether or not a document such as this, which states that the parties will seek to make an agreement later on if they can, that that can constitute an agreement in law.

Mr. Sinai: May I suggest, your Honor, counsel is now rearguing his original motion for summary judgment. I know of no federal court procedure whereby he can again reargue it. He is not only in effect asking the court for an opinion of this court in respect to our sufficiency, but it sets up as his reason for coming to your Honor that no



(Testimony of P. G. Denson.)

testimony should be introduced by Mr. Denson or any other witness. It appears to me that all counsel is now presenting to the court is the [161] matter of defenses, which he is in effect arguing to the court both as law, without citing authorities, and also as fact. If we are to proceed with this case, it appears to me that the argument presented to the court is so clearly out of order, I doubt if we will ever go ahead with the case.

The Court: I might say, Mr. Sinai, it is the contention of the Court, from what I have heard so far of the objection and understanding the objection to be, to the introduction of any evidence upon this complaint on the grounds no cause of action exists and the objection covers questions of law that will have to be decided and determined in this case, and it was my thought that the ruling would be reserved on that objection. The testimony would be taken and the matter would be decided on this objection, and all other matters of the case would be decided when the case is finally submitted. That is the thought I have to take care of this situation.

Mr. Platt: I thought that was in your Honor's mind so I didn't pretend to argue the objection.

The Court: I would not want to make any ruling that would in any way be prejudicial to those questions being raised and other questions of law that go perhaps to the question of whether or not

(Testimony of P. G. Denson.)

the complaint is sufficient for a cause of action and also in support of the defenses that are set forth there, so I do not know whether I am hasty in giving my thoughts on the disposition that will be made of this objection before it is really finished, but that is the way I feel right now. So do you want to proceed with it, Mr. Cooke?

Mr. Cooke: On the further ground that the complaint does not state facts which constitute a case where any relief is designated. Objection (k) refers to the provisions in Exhibit A that approval of plans and specifications must be had before any lease on the premises shall become effective and no such approval has been had. Of course, there is no allegation in the complaint that there has been any approval of any plans or specifications signed up in writing by Mr. Denson and the defendants, and under the provisions of that clause no lease on the premises shall become effective until the approval has been had. On the further ground, objection (l), that the exhibit is unenforceable as to specific performance, in that mutuality of obligation and remedy is wanting and defendants could not compel plaintiff to operate or manage said hotel. I would say the basis for that is the general tone and character of the lease, I mean the agreement, as of September 24, 1945, as to [163] the provision of the rentals, the percentage of the rentals that should go to the lessors for payment of rent. As I said earlier in the proceedings, as

(Testimony of P. G. Denson.)

a protection to the lessors, an accounting for those rentals must be honestly and accurately done and to that end there was a personal obligation on the part of the lessees and hence the case is one where specific performance could not be decreed against Mr. Denson, for instance, and if a specific performance could not be decreed against him, then by the same token it cannot be decreed in his favor. That is as we see it under the law. In other words, Mrs. Mapes couldn't bring a suit here and set up this same document and ask your Honor that Mr. Denson proceed to take charge of the hotel as soon as it is finished and operate and render accounts, because Mr. Denson could say, verified by a thousand cases, that no such relief could possibly be had, because it involved his personal services; the Court had no power to compel anybody to perform personal services because we couldn't compel him by specific performance to perform his part of this alleged agreement, he has no standing to compel us to perform our part.

The Court: The objection to the introduction of evidence on the ground the complaint does not state facts sufficient to constitute a cause of action, the ruling on that objection will be reserved and the plaintiff may proceed with the [164] testimony and evidence.

Q. Will you please state your full name?

A. Peter G. Denson.

Q. And you are the plaintiff in the action?

A. I am.

(Testimony of P. G. Denson.)

Q. Where do you reside?

A. At the present time at the Sir Francis Drake Hotel in San Francisco, California.

Q. How long have you resided in California?

A. I have been there since March 4th or 5th of this year.

Q. How long have you resided in California, in the State of California?

A. Since 1908.

Q. What is your business or profession or occupation?

A. Hotel operator.

Q. How long have you been engaged in that profession or occupation?

A. I have been operating since 1924.

Q. Prior to that time what was your profession or occupation?

A. I was civil engineer with Ford, Bacon & Davis, Engineers, New York, address 39 Broadway at the present time.

Q. Have you used that engineering experience and knowledge in your hotel operations?

A. I have.

Q. Did you have engineering experience in the first World War? [165]

A. I did.

Q. In what capacity?

A. I was a captain in the Engineering Corps.

Q. That continued during——

A. (Interrupting): From the time I was in the service.

Q. What has been the nature and extent of your hotel operations?

(Testimony of P. G. Denson.)

Mr. Cooke: If the Court please, may I interpose an objection to the testimony sought to be elicited by this question and this type of question on the ground it is irrelevant and immaterial as to what Mr. Denson's experience has been, whether he was a capable hotel man or otherwise. The thing that we have to do with here is an agreement. He made an agreement with the defendants. There is no attack made on him as to his competency and it seems to me any time taken up proving his experience, etc., would be of no help to the Court. We object to it.

The Court: Objection will be overruled.

Q. You may answer the question.

A. I have had many hotels that I have owned and operated.

Q. What are they?

A. I have operated the Senator Hotel in San Francisco, the Governor's Hotel in San Francisco. Those are the new hotels that were built for me. After that I built the Hotel Tioga at Merced, California. After that—I was there for a period [166] of one year operating the hotel—the next hotel I had after that was the hotel in Dunsmuir and the Hotel Medford in Medford, Oregon.

Q. What was your affiliation with the hotel at Medford, Oregon?

Mr. Cooke: The same objection, your Honor, goes to all this type of evidence, without repeating.

The Court: Yes, that is understood.

Mr. Cooke: The same ruling?

The Court: Same ruling.

(Testimony of P. G. Denson.)

Mr. Cooke: We have a stipulation that exception will be made to all rulings.

The Court: I think so. I think under the rules it is not necessary to take exceptions.

Mr. Platt: I think that is the rule now, your Honor.

The Court: However, we will permit it to be taken.

(Last question read.)

A. I was a lessee there and operator.

Q. What was the condition of the hotel when you took hold of it?

A. The hotel was losing money, a thousand to two thousand a month when I took it over. The month before I took it over it lost some \$1900.

Q. What was its condition when you left it?

A. It was paying very well.

Q. Are you acquainted with the defendants in the action? [167]

A. I am.

Q. When did you first meet the defendant, Irene Gladys Mapes?

A. Either in the month of February or the month of March, 1940.

Q. That was upwards of six years ago?

A. That is six years ago, yes, sir.

Q. And when or where did you meet her?

A. I met Mrs. Mapes at her residence here in Reno. I think it is 509 Ralston Street.

Q. Upon that visit were you accompanied by any one else?



(Testimony of P. G. Denson.)

A. I was. There was another gentleman with me.

Q. Did you engage in conversation with Mrs. Mapes?

A. I did. It was in the evening when I first met Mrs. Mapes and I made an appointment for the next morning and I took Leon Hutchins out with me and we discussed building of building in some city.

Q. Who was Mr. Leon Hutchins?

A. He was the owner and manager and director of the Sir Francis Drake Hotel at San Francisco. That is, he had been until a few months previously to that, for some eight years.

Q. Can you recall about what was said at that conversation?

A. We discussed with Mrs. Mapes in regard to building of the hotel on the present land and she assured me she wanted to build a hotel and I proposed that I should interview an architect and have plans and preliminary lay-outs of the hotel [168] building that she had in mind and this I did.

Q. About how long did you spend in her company that morning?

Mr. Cooke: If the Court please, we object to this as irrelevant and immaterial. Occurring as it does prior to the making of the document that is involved here under the Court's consideration, that it is irrelevant and immaterial. If it is anything at all, it would be preliminary negotiations and the rule is preliminary negotiations are not admissible in evidence because the written document is supposed to

(Testimony of P. G. Denson.)

merge all those negotiations and all the Court has to do is to turn to the written document. There would be nothing in this case here, or at all as to testimony as to what appeared six years before any written agreement was arrived at.

The Court: What is your theory, Mr. Platt?

Mr. Platt: Well, if your Honor please, this, of course, as your Honor knows, is a suit in equity and the evidence of Mr. Denson has been categorically denied in the Answer. Our theory is that for a long series of negotiations, beginning almost six years ago, Mr. Denson was led to the belief that he, with Charles, would ultimately get a lease on the hotel. These negotiations began six years ago, that they continued with some interruption during the war, and that they were resumed again in 1944, that confidence was reposed in Mr. Denson and by word, act and conduct, as we pleaded, he was led to believe that he would ultimately get the lease and that his [169] efficiency, experience and ability would be relied upon in the construction of the hotel, in suggestions as to plans for the hotel, all based upon his experience, and we desire to show these continued words, acts and conduct on the part of the defendants, in order to establish by the evidence that he was justified in relying in good faith that they, in good faith, would grant him a lease.

The Court: I think that that portion of the question, or the answer to the question, that deals with his qualifications is material, but I can't see

(Testimony of P. G. Denson.)

how we should consider matters of negotiations that occurred prior to the going into the contract.

Mr. Platt: Before your Honor rules upon it, there is another matter to which I desire to call your Honor's attention and I consider it a very essential and important matter. It is denied here that there was a meeting of the minds at the time this contract was entered into. We desire to prove and establish, by a long series of conversations, a meeting of the minds and an understanding between Mr. Denson and Mrs. Mapes as to what they were to agree upon as to the material and essential allegations of this lease. This question of the meeting of the minds, even though the record is clear, it is one of the few admissions that have been made in this case by the defendants, even though the record is clear [170] that they all executed this contract, yet they deny, and Mr. Cooke a few moments ago insisted upon it, they deny a meeting of the minds upon the matters and things that went into that contract. We desire to prove by oral evidence that there was a meeting of the minds, that they understand the condition perfectly.

The Court: The ruling will be that matters of negotiation prior to the execution of the contract be excluded, and any questions in regard to Mr. Denson's qualifications will be admitted.

Q. When after this first visit, Mr. Denson, did you again meet with Mrs. Mapes?

A. Do you mean again after the time that I just mentioned in 1940?

(Testimony of P. G. Denson.)

Q. Yes.

A. I would say, the best I can remember, is either February or—April or May of 1944, somewhere the latter part of the spring.

Q. And where did you meet with her at that time?

A. I went out to Mrs. Mapes' home.

Q. Was there any one else present except you and Mrs. Mapes?

A. Well, the best I can remember, Gloria was there. I don't know whether she was in the room while Mrs. Mapes and I visited or not. I can't be positive about that.

Q. Did you at that time bring any one else with you? [171]

A. No, I was alone.

Q. What generally did you discuss on that occasion.

Mr. Cooke: We object on the same grounds as in the previous objection, irrelevant and immaterial, any event brought out being violation of the statute of authorities, preliminary negotiations are merged in the document as of September 24, 1945.

Mr. Platt: Well, if your Honor please, in connection with that objection, I desire to show through a long series of negotiations and conferences that there was a waiver upon the part of Mrs. Mapes and all other defendants as to the time element, that pursuant to these long negotiations they are estopped from enforcing the time element provisions of this contract. I also desire to show that

(Testimony of P. G. Denson.)

through a long series of negotiations that Mr. Denson indulged in what is known in equity as part performance of his obligations, that they recognized that he was part-performing, they recognized that they did waive the time element, and through a long series of negotiations and conferences they waived the time element and were estopped and we plead that expressly.

The Court: Matters occurring after the execution of the contract——

Mr. Platt (Interrupting): Our theory is, if the Court please, that it is tied in with negotiations and understandings before the contract. [172]

The Court: The Court is asked to order specific performance on this contract. I can't see what you have to do with matters that happened prior to the execution of the contract. Objection will be sustained.

Q. When, if again, did you visit Mrs. Mapes after, what was it, March of 1944?

A. February or March—no, April or May of 1944, the best I can remember. The records could be gotten from the register at the hotel to show the exact date.

Q. When did you visit with her again?

A. September, 1944.

Q. And were you alone at that time?

A. I called on Mrs. Mapes, that is, when I first met Charles, the best I remember, that I met Charles.



(Testimony of P. G. Denson.)

Q. Was there any discussion at that time as to whether Charles was to be associated with you in the lease?

A. Mrs. Mapes and I discussed it.

Q. What was said by you and Mrs. Mapes?

Mr. Cooke: Objected to as irrelevant and immaterial and for all the reasons urged in the preceding objections.

The Court: Same ruling, objection sustained.

Mr. Platt: But your Honor, please, in connection with that we have alleged it was at Mrs. Mapes' insistence and request that Charles Mapes be associated with Mr. Denson and [173] they have denied that. Of course we feel that we ought to be allowed to establish the allegations of our complaint.

The Court: I recollect that allegation. The ruling will be vacated and objection overruled in regard to that question.

Q. What was said between you and Mrs. Mapes with respect to Charles' association with you as a lessee?

A. Can I bring in in regard to my first word about Charles—well, the desire to have Charles associated in the operation of the lease.

Q. You mean that suggestion was made to you by some one else?

A. It was made to me by Mr. Moorehead.

Q. Who is Mr. Moorehead?

A. Mr. T. P. Moorehead is the builder that is building the hotel at the present time. I don't know exactly what the set-up is. I think they called



(Testimony of P. G. Denson.)

T. P. Moorehead Construction Company. I am not familiar with just exactly the arrangement Mr. Moorehead has with them at all, but I know he is superintendent and has had the plans and has produced the architect and the mechanical engineer and all of the drawings that have been furnished and designed and gotten out have been done by Mr. Moorehead and his associates.

Q. Do you know who suggested Mr. Moorehead?

A. I proposed Mr. Moorehead.

Q. To Mrs. Mapes? [174]                      A. Yes.

Q. When did you do that?

A. That was in 1944. That was before September.

Q. Well, did Mr. Moorehead represent to you that Mrs. Mapes had asked him to tell you about her desire to have Charles associated with you?

A. I wouldn't say—

Mr. Cooke (Interrupting): Just a moment. I object to that as leading, irrelevant and immaterial and calls for hearsay.

The Court: Objection sustained.

Q. What did Mrs. Moorehead say to you?

Mr. Cooke: Same objection.

The Court: Same ruling.

Q. Had Mr. Moorehead at that time been engaged as an architect or a builder for the hotel?

A. He didn't have his contract but he had been asked—anyway, he was getting out drawings. He had visited Mrs. Mapes and he was getting out preliminary drawings.

(Testimony of P. G. Denson.)

Q. Well, I understood you to state that in this conversation you had with Mrs. Mapes in 1944, I think you said in August, 1944?

A. September, 1944.

Q. You discussed the question of Charles being associated with you? [175]

A. We did.

Q. What was said by Mrs. Mapes and what was said by you?

Mr. Cooke: May our same objection go to that preliminary negotiation?

The Court: Overruled.

Q. Would you answer the question?

A. Mrs. Mapes and I had discussed Charles and I informed her that Mr. Moorehead had spoken to me about it and I had told Mr. Moorehead it was quite all right with me, I would be willing to have Charles associated with me in the deal, and Charles was coming in that evening by plane and I was visiting—that afternoon or evening, I forget just what time it was—but Mrs. Mapes asked me to wait and meet Charles, so I did, and then Charles and I visited together the next day.

Q. And was there a discussion during the time that you visited in September concerning the hotel building?

A. Yes, we discussed the hotel. There was nothing said in regard to—nothing discussed between Charles and I about the setup of the deal with him and I at that particular time.

Q. Did you ever submit or present any plans for the construction of the hotel to Mrs. Mapes?

(Testimony of P. G. Denson.)

A. Not from 1944. Mr. Moorehead presented the plans; but Mr. Moorehead furnished me with plans and changes as they were being made right along.

Q. You knew when Mr. Moorehead furnished you with plans that [177] he had been engaged by Mrs. Mapes as builder of the hotel?

A. He didn't have his contract until November. I had my contract before that matter was——

Q. Do you know, of your own knowledge, that Mrs. Mapes knew that Mr. Moorehead was showing you plans of the hotel?

A. Oh, yes, positively, because I communicated with Mrs. Mapes in regard to the size of the rooms and also made changes. Many things in the plans that I objected to.

Q. When did these communications take place with Mrs. Mapes and in what manner?

A. Mrs. Mapes phoned me on the 9th of August, 1945, in Visalia, in California, and said, "Let's get together, Mr. Denson, now and start this hotel and get ready and let's make an appointment. You can either come to Reno or I will meet you in San Francisco." I thought it was best to meet in San Francisco and I suggested San Francisco. She said that would be all right and I told her to set the date. She said any time would be convenient. I said, "Any time that would be convenient for you," and I am positive that we set the date for the 15th of August. I asked Mrs. Mapes if I should phone to Mr. Moorehead and have him over there and she said, "By all means." This I did. I phoned

(Testimony of P. G. Denson.)

Mr. Moorehead, I think my record shows that his phone number is York 6430, in Los Angeles. I requested Mr. Moorehead to phone Mrs. Mapes back to satisfy himself that that was her wishes. If I remember correctly, Mr. [178] Moorehead phoned me back and said he had phoned Mrs. Mapes who would meet us there.

Q. Did Mrs. Mapes later meet you in San Francisco?

A. Yes, Mrs. Mapes arrived in San Francisco, if I remember correctly, and I think the records show that, on the 14th of August. I think that was the day the Japanese surrendered. I was in the lobby of the Sir Francis Drake Hotel in San Francisco.

Q. Was there any one with her?

A. She and Gloria came in together.

Q. Gloria is her daughter?

A. Her daughter.

Q. One of the defendants here? A. Yes.

Q. And where did you actually meet?

A. We met in the lobby there. I didn't know just when Mrs. Mapes was coming in. I had an idea she would be in some time and there was some mix-up about the reservation that Charles had taken care of.

Mr. Cooke: The question is, where was the meeting?

A. At the Sir Francis Drake Hotel.

Q. What room or apartment?

A. We first met in the lobby.

Q. Who were present at that meeting?

(Testimony of P. G. Denson.)

A. I think that Mrs. Denson was in the lobby when they came [179] in. I am not just positive whether she was in the lobby or not, but I met with Mrs. Mapes and then there was some mix-up in regard to the reservations but one of the assistant managers assured me——

Q. (Interrupting): All right. Where did you actually meet with Mrs. Mapes?

A. This particular date was right in the lobby of the Sir Francis Drake Hotel on the 14th when we arrived.

Q. I asked you, Mr. Denson, who was present at that meeting outside of Mrs. Mapes and Gloria?

A. I think Mrs. Denson was in the lobby but I wouldn't be positive.

Q. Where did you meet, in any apartment or room?

A. No, I had gone to the Senator Hotel to be sure of accommodations—there was a mix-up—so when I returned to the lobby Mrs. Mapes wasn't there and Charles came and he said, "Come on, they are all upstairs and Mrs. Denson is up there," so we went upstairs. I don't remember whether Mrs. Mapes and Gloria—Charles went up with me and if I remember correctly, I think two young boy friends of Gloria's were up there in the room, or they came in afterward, because they were there together.

Q. Was there any discussion about the hotel at that time?

A. I don't believe it was discussed at that par-

(Testimony of P. G. Denson.)

ticular time. We had an appointment for the next day to meet the next day with Mr. Moorehead on the mezzanine floor. [180]

Q. Did you meet the next day?

A. We all met the next day.

Q. On the mezzanine floor?

A. Of the Sir Francis Drake, same hotel.

Q. Who were present at that meeting?

A. Mrs. Mapes and Charles and Gloria, the daughter, Mr. Moorehead and Mr. Slocum.

Q. Who is Mr. Slocum?

A. Mr. Slocum is an architect and is the one who has designed the plans for the hotel, working under Mr. Moorehead.

Q. And what was the general discussion on that occasion?

Mr. Cooke: We wish to insist upon our objection, if your Honor please. This is admittedly long prior to the making of the Exhibit A, the document in question in this case, and that it could amount to nothing but bringing in the very negotiations which are conclusively admitted to be merged in the written agreement and therefore inadmissible as evidence what the agreement was. That so far as counsel's statement they are relying upon this by way of estoppel and waiver, etc., we say that their conduct and things occurring after the agreement was signed up on September 24, 1945, would be admissible enough, but they can't go back to things a month prior to the making of the agreement to show estoppel or waiver. There can't be a waiver of



(Testimony of P. G. Denson.)

something that doesn't exist or involve something that doesn't exist. Counsel urged as one reason for [181] the admissibility that they had alleged these things in their pleading, in their complaint. My answer to that is that allegations do not make matters material; then a lawyer could allege anything he wanted to put in and then say we allege this and therefore we have our proof. In other words, an allegation does not make it any more admissible than if not alleged.

Mr. Platt: Well, if your Honor please, we not only have alleged it, but they allege it. They have uniformly alleged that it was the understanding between the parties and that the agreement itself provided that the parties should get together upon plans and specifications for the building. Now we are trying to show the efforts that were made by Mr. Denson to get together with them on plans, those efforts having started even before the agreement was signed. It was arranged that the architect should be there, that Mr. Moorehead should be there, that they would discuss plans, and we expect to prove that he, himself, upon many occasions, before and since, has made suggestions as to plans. He was carrying out his part of the agreement and we expect to establish his part-performance beginning further back, from the time about which he is testifying now.

The Court: I will overrule the objection. You may answer the question.

(Question read.) [182]

(Testimony of P. G. Denson.)

A. The general discussions were the plans in general. Mrs. Mapes didn't approve of a good many of the proposed lay-outs that Mr. Slocum had and they were getting together on those many changes. The next day, Thursday, we all met and more changes were made later that afternoon by Mr. Slocum, the architect, and brought back the next day. The same thing took place on Friday. We all met together for more changes made and I suggested to Mrs. Mapes that this was just a matter of preliminary drawing, that we would get more details and make larger drawings that she could tell better about and so, if I recall, some time that Friday afternoon Mrs. Mapes was desirous of seeing some of the apartments in some of the hotels in San Francisco and I arranged to take them around to some of the places.

Q. When you say you arranged to take them around——

A. (Interrupting): I phoned these various managers of the different hotels like the Alexander-Hamilton on O'Farrell Street, between Leavenworth and Pine I think it is, in that neighborhood, and Mr. Tremaine, who is manager of the Tremaine Apartments, and he suggested I take and show them his apartments. We did. We went from there to the Fairmont Hotel. I hadn't phoned but due to the fact I knew the manager very well, and he had just left for his vacation, but knowing his secretary, she arranged for one of the assistant managers to show us over. Then from there we went

(Testimony of P. G. Denson.)

to the Mark-Hopkins. I phoned Mr. Rosin, one of the executives of the Mark-Hopkins— [183] he has been there since the hotel was built—and he showed us some two or three apartments.

Q. Who was with you on that trip?

Mr. Cooke: I object on the ground under no conceivable theory in the case is this evidence admissible. One reason urged for the evidence going in that we objected to, was that it was alleged, but there is no allegation about visiting hotels. We earnestly insist it can have no possible bearing on the question whether this agreement is one that your Honor can lawfully and specifically enforce.

Mr. Platt: I submit, your Honor, that a rather extraordinary position is being taken in this case. Gloria Mapes, a member of this family, knew nothing about this agreement, evidently had no knowledge of anything concerning these transactions and we are endeavoring to show, if we can——

The Court: The objection will be overruled and he may answer the question.

(Question read.)

A. Mrs. Denson was along, Mrs. Mapes, Mr. Moorehead. I can't be positive whether Gloria was or not, but I feel that she was. I think she was; I can't be positive.

Q. Do you know whether Gloria was in San Francisco on that occasion?      A. Oh, yes.

Q. Do you know whether she met with you and Mrs. Mapes at any [184] other time on that visit?

(Testimony of P. G. Denson.)

A. I think the best I can remember we all had dinner together one of those evenings and I feel positive Gloria was there.

Q. When, if you remember, did you meet Mrs. Mapes again?

A. Well, I think we met very shortly after that in San Francisco again and I believe that Mrs. Mapes was staying at the Fielding Hotel and we met on the mezzanine of the Fielding Hotel and at that meeting was Mrs. Mapes, Charles, Mr. Moorehead, and I am almost positive that Mr. Slocum, the architect, I am positive he was there, Mr. Slocum was there also.

Q. What was said and done on that occasion?

A. Well, we met that morning and went over the plans in general.

Q. Who submitted the plans?

A. Mr. Slocum and Mr. Moorehead and we went over those things in general and then that was in the forenoon and then we all went to lunch and oh, I feel positive we went back to the Fielding and there was more discussion going over more of the plans. I can't be sure of that, but I am almost positive that we went back again that afternoon up to the mezzanine of the Fielding.

Q. Do you recall any other meeting with Mrs. Mapes prior to the time Mrs. Mapes and Charles signed the agreement as Exhibit A here?

A. Charles and I came to Reno on Friday aft-

(Testimony of P. G. Denson.)

ernoon. I think [185] that was September 21st, and stayed there Friday evening and Saturday evening and left there about six o'clock on Sunday, the 23rd.

Q. And did you visit at Mrs. Mapes' home on that occasion?

A. We did. Charles had phoned to me at Visalia, phoned to come over and meet the attorney for Mrs. Mapes and we had already discussed what the percentages were and the percentage deal had been discussed.

Q. When did you discuss the percentages?

A. Well, Mr. Moorehead—I had given Mr. Moorehead what the deal would be and Mr. Moorehead, I think, had taken that up with Mrs. Mapes—I am not positive—but any way, when we had this meeting in San Francisco, that was August, between the 15th and 18th, Charles and I got together. Charles wanted to see me and I made an appointment to meet him on the mezzanine floor and he informed me he wanted to be 50-50 on this deal of leasing of the hotel and everything about it. I told him that was all right, but I would make a little request—that I wasn't looking for any publicity, it wouldn't even show on our letterheads or stationery or anything of the hotel forms—but I would like to have the management of the operation for a specified time, due to the fact that he was inexperienced. I thought we ought to have a little agreement between he and I, or we didn't have to have an agreement. "Well," he said, "Mr. Denson, I



(Testimony of P. G. Denson.)  
expect you to be the operator," so I had full [186] confidence in him and I felt sure that would be the way it would be. I think that was that, but that was the discussion between Charles and I.

Q. Then were you in Reno on September 25, 1945, and signed the agreement?

A. No, I was not. I left here on the night of the 23rd, Sunday. Mrs. Mapes phoned for Mr. Cooke. Charles and I and Mrs. Mapes, I tried——

Mr. Cooke: Object as not responsive to the question.

Q. Well, did you see her on the 23rd or 22nd or 21st?

A. I saw Mrs. Mapes the night of the 22nd. I was here on the 21st, that was a Friday, and I was here Saturday and, I think those are the dates. September 22nd, and I left here on the 23rd and the agreement was prepared by Mr. Cooke on the 24th and mailed to me by air mail special to the Biltmore Hotel at Los Angeles and that is where I received this contract signed by Mrs. Mapes.

Q. Did you have any conversation in September with Mrs. Mapes before you left for Los Angeles, about the contract?      A. I did.

Q. When did you have that conversation?

A. We talked the night I arrived. I wanted to go back Saturday morning, but Mrs. Mapes wanted me to stay over Saturday. Then I tried to get Mrs. Mapes to get Mr. Cooke to come over and be there and I thought Mr. Cooke would be there Saturday but [187] it was Sunday afternoon at four o'clock



(Testimony of P. G. Denson.)

before I could get Mr. Cooke over there. She objected to the contract we had and objected to the way I was guaranteeing taxes and insurance and interest on borrowed money and upkeep and also amortization of the loan over the period of 20 years. So after Mr. Cooke came——

Q. (Interrupting): Now who sent for Mr. Cooke?

A. Mrs. Mapes or Charles, I can't remember just which one.

Q. When did Mr. Cooke arrive?

A. About four o'clock in the afternoon.

Q. On Sunday? A. On Sunday.

Q. What was said by you and Mr. Cooke and Mrs. Mapes? A. I explained to——

Mr. Cooke (Interrupting): We object and wish the objection to apply to those preliminary negotiations and discussions and talk and conclusively presumed all matters merged in the written document admittedly signed as a result of these preliminary discussions and negotiations, and I add my other objections I made to the admissibility of the same offers of testimony in regard to things that occurred prior to the making of the instrument.

Mr. Platt: I submit, if the Court please, the answer in this case has denied a meeting of the minds upon this contract when it was entered into. If they will admit the [188] meeting of the minds of the material and essential things in this contract, I won't ask Mr. Denson these questions.

(Testimony of P. G. Denson.)

The Court: Objection overruled.

A. The objection to the contract, as I stated, was due to the fact it mentioned the income from the building. Mrs. Mapes says, "You have nothing to do with the stores and let's leave all of that out of the contract. Just make it a straight percentage as to what it calls for and never mind about the insurance, taxes and all of those other things and amortizing the loan." I finally got Mrs. Mapes to send for Mr. Cooke. He arrived. I explained what it was and that made it better and show whoever was making the loan that the loan would be secured, that we were putting our furniture in and giving a first chattel mortgage to secure the faithful performance of the lease or agreement we were making, and I instructed Mr. Cooke to redraft it and to please Mrs. Mapes to leave that out, but it was to her advantage and interest and protection it should be there. He was to redraft it and to leave this out and they agreed to redraft that on Monday and get it to Los Angeles in order that I could go and try to negotiate a loan. This they did. I received it and my envelope will show it. about 10:10 the morning of the 25th. After looking it over, I discovered that they had put all that in there that they were supposed to leave out but had left out the stores. I phoned Mrs. Mapes and she wanted to know if I received the [189] contract and I told her I had but it was not drawn the way that they intended to draw it, that they had inserted the clauses that they objected to but she failed to put

(Testimony of P. G. Denson.)

the matter in there complete and I informed her I would have to have the stores in there and she informed me that it would include everything. I informed her I would insert it and type it in and we could initial it when I came back over and that I did and it was initialed when I arrived back on the 4th and when I made the deposit on the 4th, put up my check, it was initialed by Mrs. Mapes, signed by Mrs. Mapes, initialed by Charles, signed by Charles and myself and witnessed by Mr. Cooke and also his secretary in his office.

Q. During all of these negotiations and at the time of this last conversation, you were not represented by any attorney, were you?

A. No, I was not represented by an attorney.

Q. So you left Reno and you gave instructions to send the contract to you and you informed Mrs. Mapes that you were making this interlineation and then what did you do? Did you sign the contract in Los Angeles or did you come back to Reno?

A. I came back to Reno on the 3rd of October.

Q. 1945?

A. 1945. I think that Charles met me at the depot and drove me out to the house. I know he met me on one occasion and I think that was the time he met me, the night of the 3rd of [190] October, and drove me out to the house.

Q. When did you sign the contract?

A. I signed the contract on the 4th of October when I made the deposit, when Charles——

(Testimony of P. G. Denson.)

Q. (Interrupting): Wait a minute. I didn't ask you about the deposit. I asked you when you signed the contract?

A. The 4th of October, 1945.

Q. Where did you sign it?

A. In Mr. Cooke's office.

Q. After signing the contract, what else did you do with respect to the contract?

A. I made the ten thousand dollars deposit to them and they gave me a receipt for it and after that was done I informed Mr. Cooke the next thing to do was to prepare the lease and any time you are ready, I will sign it."

Q. And who was present when you signed the contract and paid this check and made this statement about being ready to sign the lease?

A. Mrs. Mapes was present, Charles was present, Mr. Cooke was present, and I was there. I can't say whether his secretary was in the room or not, but she was just outside.

Q. Have you that cancelled check?

A. I have.

Q. I wish you would produce it. If you have the receipt, you might produce that, too. [191]

The Court: This might be a good time to take a short recess.

(10 minute recess taken at 3:30.)

Q. Mr. Denson, when you made the suggestion to Mr. Cooke and Mrs. Mapes about this interlineation in the agreement, I wish you would clarify that

(Testimony of P. G. Denson.)

suggestion. Did you mean by that that you wanted the stores included in the lease?

A. Oh, no, no, no. I wanted to show that her total income from the entire building would be sufficient to amortize her loan over the period of the 20 years.

Q. That was because you were obligated under the contract to pay her sufficient rental so that she could amortize the loan within the life of the lease?

A. That is correct.

Q. Now I asked you before the recess to produce the check which you gave to Mrs. Mapes, as I understand it, when you signed the contract. We offer it in evidence.

Mr. Cooke: We object to the admission in evidence of the offer on the ground it is irrelevant and immaterial. It is alleged that the offer was made and it is admitted that it was made. There is no issue in regard to the ten thousand dollars being paid. I do not see any use in encumbering the record with anything further upon it.

Mr. Platt: There is another extraordinary statement here in the pleading and in the answer that this payment was [192] not made contemporaneously with the signing of the agreement.

The Court: Objection is overruled and the check may be admitted in evidence as Plaintiff's Exhibit A.

Mr. Platt: May we have the privilege, your Honor, if it is desired, to substitute a certified copy?

(Testimony of P. G. Denson.)

The Court: It may be withdrawn on substitution of certified copy.

Q. Now, Mr. Denson, after you delivered that check you received a receipt, did you, for the payment of it?      A. I did.

Q. Are you acquainted with the signature of Irene Gladys Mapes?      A. I am.

Q. Did you see her sign that?      A. I did.

Mr. Platt: We offer it in evidence.

Mr. Cooke: We object, if the Court please, on the ground that the payment of the ten thousand dollars is alleged and admitted two or three times in the pleadings. There is no issue about it. The agreement is dated September 24, 1945, and we allege the payment was made on October 4th, so there is no issue as to that. It is simply encumbering the record with non-essential, immaterial matter.

The Court: Objection overruled. Admitted as Plaintiff's Exhibit B. [193]

Mr. Platt: May we have the same privilege of withdrawal?

The Court: It may be withdrawn upon substitution of copy.

Q. Have you in your possession, Mr. Denson, the agreement of September 24, 1945, signed by all of the parties to it?      A. I have.

Q. Will you produce it? Is this your signature on this agreement?      A. It is, yes, sir.

Q. Do you recognize the signatures of the other parties to the agreement?



(Testimony of P. G. Denson.)

A. Yes, those are the signatures of all the parties.

Q. Are you familiar with their signatures?

A. I am, yes.

Q. State whether or not this agreement was signed before or after you delivered the check?

A. That particular document you hold there was signed the day that I gave the check, on the 4th of October.

Q. And upon the same occasion, at the same meeting?

A. At the same meeting of all parties whose signatures are there.

Q. At the same time you delivered the check?

A. That is correct.

Mr. Platt: We offer it in evidence. [194]

Mr. Cooke: Same objection, your Honor. It is pleaded and admitted on both sides.

The Court: Same ruling. Admitted as Plaintiff's Exhibit C and may be withdrawn on substitution of certified copy.

Q. Did you remain in Reno after this transaction was completed?

A. I left by plane some time after that that afternoon.

Q. And to what place did you go?

A. I took the plane as far as Fresno and then I had some one meet me with a car to drive me to Visalia.

Q. Your home? A. Yes.

Q. Subsequent to the signing of that agreement

(Testimony of P. G. Denson.)

did you make any effort to carry out your obligations of it, or some of them, toward providing adequate and suitable furniture and equipment and accessories for the furnishing of the hotel?

A. I began to contact different firms.

Q. What were the names of the firms?

Mr. Cooke: We object to this evidence and all this type of evidence as foreshadowed by the amended complaint as to what plaintiff tried to do in getting ready to carry out his part of the contract, as irrelevant and immaterial, the specific grounds being that it does not constitute any part performance because there is no provision in the written agreement or document and nothing in any oral agreement arrangement [195] pleaded calling upon him to make any arrangements or to change any of the things mentioned in the pleadings and which he is now apparently testifying about. There is considerable alleged that he called Mrs. Mapes on the phone at that time and Charles Mapes on the phone another time and they called him and he saw the Barkers about furniture, but that is not any part of the provisions, your Honor, because there is nothing in the agreement or oral talk subsequent to signing of the agreement that called upon him to make any arrangements at all and therefore it seems to me it is irrelevant and immaterial. He wasn't, in any event, authorized to go ahead alone. If there is any agreement there, it is an agreement between Mrs. Mapes on the one hand and he and Charles Mapes on the other hand and his individual

(Testimony of P. G. Denson.)

personal acts, not associated with or participated in by Mr. Charles W. Mapes would not be anything called for by the agreement. It would be just his voluntary action and it is nothing that constitutes any provision of the thing, because it is not claimed it was required of him to do any of those things. That is the law of part performance, have an oral agreement that the parties do certain things and then he goes and does those certain things, that would constitute part performance, but for him to go out and do certain things upon this reliance upon an agreement does not constitute part performance. The most he can claim is that he relied upon this Exhibit C, the agreement of September [196] 24th, as being in force and that he was getting ready to carry out his part and thereby to hold Mrs. Mapes obligated upon the thing as to the changed conditions. This matter here, your Honor, goes to the question of whether Mrs. Mapes is estopped by reason of what he did and whether she waived the right to insist upon the time element by reason of what he did, but all of that has got to be with reference to something that is required by an oral agreement. He might go out voluntarily and go on a fishing trip and say this is in pursuance of the agreement and because Mrs. Mapes knew of it, it therefore changed the agreement. I am using an extreme illustration, of course, but I think it expresses what I am getting at, that it was only as to matters agreed upon. If he could show he had talked with Mrs. Mapes and it was agreed he was to do so and so, interview

(Testimony of P. G. Denson.)

Barkers, buy furniture and select the color and get ready for this business and then he offers to show upon this trial that, relying upon that oral arrangement he had with Mrs. Mapes that he should buy furniture and get this stuff, he is carrying out, he is performing the things that she agreed he was to perform, but here there is no allegation that he was to perform any of these things that are set up in the complaint and which he now proposes to testify to. It is a voluntary matter altogether and because she knew of it does not make a bit of difference. She is not compelled to run after him and tell him to stop doing this thing. [197] That does not make it admissible, does not make it part of the contract, does not constitute part performance or whole, does not constitute anything. Mrs. Mapes was under no conditions or obligations to hold him back, if he wanted to show progress, but we should all keep this in mind, here is an agreement, if it is anything at all, between Mrs. Mapes on one side and Mr. Denson and Charles W. Mapes on the other. Now for Mr. Denson to say that he went out on his own account and undertook, by his own individual action, without regard to his co-defendant Mapes, who had just as much to say about it as he did, that he could do anything of that kind is presumption to say the least. Co-tenants haven't any authority of that sort and under the allegation of partnership existing between those two men, why one partner can bind the other. Charles W. Mapes could have gone out and discussed the matter of furniture with some other

(Testimony of P. G. Denson.)

firm and Mr. Denson with the Barker Company but you cannot effect a change in a written document by individual independent action of these co-tenants. He here claims his own individual act constitutes a change. He does not pretend that Charles W. Mapes participated, does not pretend it was joint action of the two of them, he went and did this thing, interviewed Barkers and Dohrmann's, etc., and then he says that constitutes estoppel and waiver on the part of Mrs. Mapes to claim the time element. Authorities are uniform that things done merely on reliance of agreement [198] does not constitute part performance, only those cases where there has been some oral agreement, where that oral agreement is performed in whole or in part, that there is any part performance.

The Court: Mr. Platt, what is——

Mr. Platt: Your Honor please, as I listened to Mr. Cooke I was wondering why he advised his client to sign a written agreement or why he made Mrs. Mapes take ten thousand dollars of this man's money upon the signing of an agreement. To hear counsel talk, you would think that the agreement was not worth the paper it is written on. I submit to your Honor that that agreement is a solemn document, it calls for the performance of certain things upon the part of all the parties to it and it called for the payment by Mr. Denson of the substantial amount of ten thousand dollars, which Mr. Cooke's client accepted. Now that solemn document provides that Mr. Denson and Mr. Charles Mapes are to



(Testimony of P. G. Denson.)

furnish that hotel suitably. The agreement not only provides that, but it provides that they are to give Mrs. Mapes a chattel mortgage on that furniture as security for the payments of the rents as indicated in the agreement, and in accordance with that solemn obligation of Mr. Denson's—he treats it far more solemnly than Mr. Cooke does—in accordance with that solemn obligation, he goes out to perform and he interviews these people. We expect to furnish the hotel, to get plans for it, to get equipment for it, and we expect [199] to prove beyond a doubt that his efforts in that respect were communicated to his co-lessee or co-tenant, Charles W. Mapes and that Charles W. Mapes was familiar with everything he did in that respect. And we submit, if the Court please, that we can't see how testimony of part performance, specifically under an agreement which requires a party to furnish a hotel and to get the furniture, put it in there and give a mortgage on it, that it isn't part performance if he goes out to get it. There isn't any law in the land that is opposed to that doctrine. We expect to show by this witness, and by other witnesses, that the defendant, Charles Mapes, knew all about that. He was present and saw the plans and everything and discussed the matter with the representative of Barker Bros.

Mr. Cooke: May it please the Court, it does not seem to me that counsel has met the real issue of the objection. What I was trying to argue was what constitutes part performance in the first place



(Testimony of P. G. Denson.)

and that wouldn't consist of the independent individual acts of one of the two parties, such as supposed to be shown here.

Mr. Platt: Mr. Cooke, may I interrupt by asking a question?

Mr. Cooke: Yes.

Mr. Platt: Wasn't Mr. Denson as much obligated to assist in the furnishing of that hotel as Mr. Mapes, and wasn't [200] he carrying out the conditions of that agreement by laying the foundation for furnishing it?

Mr. Cooke: No. No, the agreement does not call for anything of that kind. It calls for putting in this furniture, but countering your question, Mr. Mapes has just as much to say about it as Mr. Denson and so far it isn't shown or offered, except by your statement just now, that Mr. Mapes knew anything about it or participated in it, but as to the statement that I seem to have a very slight regard or appreciation for what he called a solemn document, I want to say that he seems to have a spell of forgetfulness when he says that the document calls for ten thousand dollars from Mr. Denson. The document does not call for any ten thousand dollars from Mr. Denson at all, it calls for twenty thousand dollars from these two people and there was only ten thousand dollars put up and for the purpose of this case it does not matter whether it was put up by Mr. Denson or by Charles Mapes, it wasn't compliance with the agreement in any event,

(Testimony of P. G. Denson.)

but when he says he put up this ten thousand dollars and furnishes this receipt and check as to that, that presupposes conclusively, the fact is it shows there was a default on the part of Denson, he never complied with the agreement in regard to the amount, that is to furnish twenty thousand dollars, and if the co-tenant did not come through with his share, that is up to him, not up to Mrs. Mapes. I still insist upon the proposition, if the Court [201] please, that this does not show any part performance, that there is nothing in the agreement that calls upon him to do these things that he alleges he did do and therefore it is without the rule of part performance and is immaterial and irrelevant.

The Court: The objection is overruled. You may answer the question.

(Question read.)

A. Dohrmann Supply Company of San Francisco. They are on Mission between 5th and 6th Streets; Magnam-Holbrook & Elkus; D. & F., San Francisco; Barker Bros. of Los Angeles, the hotel department, and Sloane, W. A. Sloane of San Francisco.

Mr. Cooke: As to W. A. Sloane & Company, we object to that upon the ground that it is not pleaded in the amended complaint as one of the things that plaintiff did as part performance.

The Court: I do not believe that they be confined just to the names mentioned in the complaint. Objection will be overruled.

(Testimony of P. G. Denson.)

A. Well, W. A. Sloane didn't furnish me any plans anyway.

Q. But you consulted with them?

A. I did, yes.

Q. With respect to certain of the furnishings of the hotel?

A. Oh, yes yes. Am I allowed to tell something about those interviews as regards to Charles, my associate? [202]

Q. Well, I am not asking you outside of the presence of any one of these defendants about what was said to representatives of Sloane or Barker Brothers or Dohrmann or anybody else, but I am asking you this question, that subsequent to your interviews and arrangements, tentative or otherwise, with these firms about whom you have testified, did you later meet with the defendant, Charles Mapes, concerning your interviews with these various firms?

A. I did.

Q. And when and where did that meeting occur and how was it brought about?

A. Charles phoned me—I was in Los Angeles practically finishing up my deal of the sale of my hotel that I was disposing of—phoned me in Los Angeles and the best I can remember it was either the night of the 26th or the morning of the 27th of December, 1945, and was very desirous of meeting me in San Francisco to go over some changes, to meet him in Mr. Moorehead's office, that is in Oakland, in the Crenshaw Building there, anyway

(Testimony of P. G. Denson.)

Mr. Moorehead's office in Oakland, the builder's office, and I informed Charles yes, and I told him I could meet him any time he wanted me to. I drove back to Visalia that night and it was on the 28th I think—the record will show that, the register of the Lempton Hotel——

Q. Registration by whom?

A. Charles registered in there the day before I registered in [203] there on the morning of the 28th. I left Visalia at five o'clock in the morning in order to be there to meet him about 9:00 or 9:30 in Mr. Moorehead's office.

Q. When?

A. The 28th of December, 1945.

Q. All right. Did you meet him?

A. I met him in Mr. Moorehead's office.

Q. And who were present at that meeting?

A. Mr. Moorehead was there and I feel positive that Mr. Slocum was there, also the office crew in the drafting room.

Q. And who else?

A. Well, I can't remember just the names of them. Mr. Day is one of the architects there, and the mechanical engineer, I just forget his name.

Q. What conversation ensued upon that occasion in the presence of the defendant, Charles W. Mapes, Jr.?

A. We discussed the plans and we went over the plans, due to the fact that there was some of the things that I was asking for, and we had discussed——

(Testimony of P. G. Denson.)

Q. (Interrupting): You mean the plans of the hotel?

A. Plans of the hotel, yes. In fact, we didn't discuss any other plans at that particular meeting excepting the hotel.

Q. All right. What was said?

A. Well, we went into the rooms, the closet space, the mezzanine floor, the basement and also the sky room and size of the [204] check rooms.

Q. Well, did you make any suggestions of change of plans?

A. I made suggestions right along from the 31st of August of 1945. Mr. Moorehead brought the plans to Visalia to show me. We sat there for two or three hours going over the plans that he had submitted to me.

Q. When you discussed changes of plans in Mr. Moorehead's office on December 28, 1945, in the presence of Charles W. Mapes, Jr.—

A. (Interrupting): I did.

Q. (Continuing): —did Mr. Moorehead submit to you plans of the hotel that he had prepared?

A. Oh, yes.

Q. Well, did Charles W. Mapes participate with you in the examination of these plans?

A. He did.

Q. And discussion of them?

A. That's right.

Q. Do you know as a matter of your own knowledge, that your suggestions were ultimately approved?

(Testimony of P. G. Denson.)

A. Well, I feel sure that the suggestions and the recommendations that I made in regard to certain changes, that they were all adopted. Even right up to the first day of April of this year.

Q. Now, did you ever have any meeting at which the defendant, [205] Charles W. Mapes, was present with respect to plans and specifications for furnishing the hotel?

A. The first time that Charles——

Mr. Cooke: The question is, did you have such meeting, not what took place.

(Question read.)

A. For furnishing the hotel?

Q. Answer yes or no.                   A. Yes.

Q. And when and where did that meeting occur?

A. In Mr. Moorehead's office April 1, 1946, of this year.

Q. Do you recall who were present at that meeting?

A. Mr. T. P. Moorehead, the builder; Mr. Slocum, the architect, and Mr. Hart, Charles' uncle; Mrs. Mapes' brother. I think Mr. Hart was from New York, contracting; Miss Ruth Mason, the interior designer of Barker Bros. of Los Angeles, California.

Q. Anybody else?

A. The mechanical engineer was in the office, in and out from the drafting room, and myself.

Q. Well, when and how was that meeting ar-



(Testimony of P. G. Denson.)

ranged at which Charles W. Mapes, one of the defendants, was present?

A. I called Mrs. Mapes from Los Angeles on March 25th, which the record will show.

Q. 1946? [206]

A. 1946. I talked with Mrs. Mapes eight minutes on the phone.

Q. What did you say to her and what did she say to you?

A. I talked from the hotel in Los Angeles. Mrs. Mapes said she was very sorry Charles wasn't there because there was a little something he wanted to mention to me about the sky room. I said, "Mrs. Mapes, I will call Charles tomorrow." She said, "I will see that he will be here." I phoned Charles on Tuesday. I talked to Charles seven minutes. I wanted Charles to come to Los Angeles. He had agreed he would come to Los Angeles any time I wanted him to look over different lay-outs that I was having prepared by Barker Bros. Furthermore, I wanted him to bring Mr. Slocum, the architect. He agreed to pay Mr. Slocum's expenses to Los Angeles. Mr. Moorehead said he would like to also come and I told him I would be very glad to have him in Los Angeles too.

Mr. Cooke: Are you now telling what took place on March 25, 1946?

A. This is the 26th I phoned Charles, the following day. Pardon me if I am getting a little ahead of it. I phoned Charles on the 26th—

Q. May I interrupt? When you say you ar-

(Testimony of P. G. Denson.)

ranged to discuss with him the various lay-outs, what do you mean?

A. Those were plans being prepared by Barker Bros. which he knew I was having drawn up.

Q. For furnishings? [207]

A. For furnishings and everything that we were to equip the hotel with over there.

Q. All right.

A. Charles said it would be impossible for him to come down to Los Angeles, that his uncle was here from New York, that he would like to meet me in Mr. Moorehead's office. I informed Charles that would be all right, that I always told him I would go to San Francisco and meet him any time he wanted me to. I said, "When do you want me to come up?" He agreed he would either phone or wire me. He didn't mention anything about the sky room to me on the phone. So he didn't phone or wire me the next day and I think it was Friday before he phoned me—it might have been Thursday, but I think it was Friday. I told him all right. He set the date. I asked him why he didn't phone the next day and he said he had tried to get me and couldn't. So I suggested that I would bring up all of the drawings and lay-outs of designs that were prepared by Barker Bros. He said, "Well, that will be all right." I went over then to Barker Bros. in order to get the minute drawings and plans which I have with me today and the designs, lay-outs. Mr. Crawford, manager of Barker Bros.,

(Testimony of P. G. Denson.)

suggested that Miss Mason be in San Francisco at this meeting.

Q. Who is Miss Mason?

A. Miss Ruth Mason, the interior designer, she was at that time, for Barker Bros., and I thought that was rather heavy [208] expense, in fact, I remarked——

Q. Well, eliminate your own opinion.

A. Anyway she came up. I had an appointment with Charles to meet him in Mr. Moorehead's office, I think at 9:00 or 9:30 or 10:00 o'clock on a Monday morning, which was April 1st.

Q. 1946?

A. 1946. I came up on the last day of March, the 31st, on the two o'clock plane and Miss Mason, I understand, came up on the three o'clock plane. That evening Charles had left a little note in my box at the hotel.

Q. What hotel?

A. The Sir Francis Drake Hotel in San Francisco. I think the records show he had registered in there the day before I arrived—that he would see me the next morning, that they were stopping at the hotel and he would drive me over to Mr. Moorehead's office. We met the next morning, Charles and I and Mr. Hart, his uncle, Miss Mason, we met at breakfast.

Q. Where did you meet?

A. In the lobby of the Sir Francis Drake Hotel, at breakfast in the coffee shop, and Charles drove us over to Mr. Moorehead's office. That was on the

(Testimony of P. G. Denson.)

morning of April 1st of this year, and I think we arrived there around 10:00 o'clock. In his office I already stated the number of people there, who they were. I introduced Miss Mason to Mr. Moorehead and Mr. Slocum and mentioned to Mr. Moorehead that we had gone about [209] as far as we could with these various lay-outs, due to the fact that we would have to have more detailed drawings showing the heights of ceilings and size of windows. Mr. Moorehead informed me, "Mr. Denson, those plans will be ready by the 15th of this month." That was of that April. I said, "Make a notation of that, Miss Mason," and you can send Barker Bros., one copy and send me two copies, one for myself and one for Dohrmann's. We worked on the plans for the basement up through every department, going over the various changes.

Q. Did Charles W. Mapes, the defendant, participate?

A. He was right there, looked over all the drawings and various designs which I have with me. When we got to the sky room there was a change I wanted to make as to the size of it, which has been adopted and that has been used. It is much larger than what the plans I have now calls for, but in looking over the various lay-outs and designs prepared by this interior designer, this Ruth Mason of Barker Bros., Charles made the remark that he did not like to decide anything definite on the sky room, there was a little something he wanted to take up with Mr. Denson, so then it

(Testimony of P. G. Denson.)

was some 20 minutes after 12 or half past, so I suggested that he all have lunch, which we all did. After lunch, there was no hurry; we gathered up all the plans, went back to San Francisco, Charles with his uncle, Miss Mason and myself in his car. Miss Mason was taking the five o'clock plane back that afternoon. Charles went up [210] with Miss Mason to get the brief case she had with notes and prices, which had never been submitted. We didn't get that far. Charles said he would come down to my room, which he did just a few minutes after that. Charles came down and told me that there was something he wanted to talk to me about the sky room. He informed me that they had such big offers for the sky room that it was just out of our reach and we couldn't begin to compete with the offers from these gamblers that they had been offered for the sky room. I informed Charles I didn't like the idea of giving up the sky room, that we couldn't lose control of that. I said, "Just explain more thoroughly," so he started in about the cost of the building and other things in particular and I told him, "Well, Charles, our contract calls for the sky room and specifically states that and I don't want to give up the sky room." "Well," he says, "if that is the way you are going to talk, there is no use talking," and he got up and started out of the room. I persuaded him to sit down again and not lose his temper and talk things over. I informed him our contract called for the sky room. He claimed his mother was rushed into the contract.



(Testimony of P. G. Denson.)

Well, that I resent and informed him how long I had known his mother and we had been working on this particular deal since some time the early part of 1944 or middle part of 1944 right up to now. Well, he left the room and he said, "I will be back again about five o'clock and talk to you some more." I said, "All right, [211] I will be here waiting for you." So about quarter to six I had him paged. He said he was waiting for a lady friend and would phone me as soon as she arrived. I told him all right. Well at 6:15 the boy phoned. I had invited he and his girl to have dinner, be my guests that evening. He phoned me and asked me to come down to the Persian Room and have a drink. I told him all right, so I went down and went into the Persian Room and the maitre d'hotel asked me if we were going to have dinner and I said I was waiting for some one. There were only five or six people there and I didn't see Charles but saw them over in the lounge and I went over and visited with his uncle and met the girl and I suggested we have dinner at the Persian Room and Charles informed me no, they wanted a sea food dinner. I informed him any place he wanted to go was all right with me, so we went to dinner at Bernstein's, but if I remember they refused to be my guests, in fact, they took care of the check themselves, but he let Mr. Hart walk with the girl on the way to Bernstein's, wanted to talk with me more about the sky room. I said, "Charles, who are making these big offers?" He said, "They



(Testimony of P. G. Denson.)

are legitimate; they are friends of ours; in fact, the offer is big enough to take care of the cost of one-third of the building." I had very little to say on the way to Bernstein's restaurant. On the way back up he had his uncle walk with his girl again, wanted to talk to me some more. We went over to the lobby of the hotel and Charles [212] remarked to me he felt sure if I would come on over to Reno that he and his mother and I could get together and arrange things satisfactorily, due to the fact that he have all of the hotel and the cocktail lounge and casino part downstairs. I told him we had a contract with Mrs. Mapes and it would be very bad to give up and try to have some one else in there, that we couldn't lose control of the sky room and our contract specifically stated it, so therefore I was going to stand on our contract. However, I shook hands with him, but I told Charles I was very much hurt and disappointed by the way he talked to me. He remarked he had already forgotten about that, he probably lost his temper and I informed Charles I didn't want it to happen again, I was going to overlook it but I didn't want any one to shove me around, that he and I were entering as partners and we must get along. I shook hands goodbye and there was no bitterness on my part at all and Charles went on in the cocktail lounge and I went to the Sir Francis Hotel and phoned Schrader, vice-president of the Wells Fargo, and went out to his house that evening.

Q. Mr. Denson, you testified that Miss Mason

(Testimony of P. G. Denson.)

submitted plans and specifications from Barker Bros.?

A. Not specifications, The specifications and prices she probably had with her, but I have never seen the specifications and prices myself from Barker Bros.

Q. She did submit plans though? [213]

A. Oh yes.

Q. Have you with you now the plans that she submitted?

A. I have.

Q. I wish you would produce them.

A. That is something proposed and more or less design of picture showing the coffee shop lay-out. This design showing apartment and the rooms lay-out; set-up of furniture. As a rule we generally make little models and place them around to show the most appropriate places to place them.

Mr. Platt: We offer them in evidence.

A. There are plenty more.

Mr. Platt: We offer them as one exhibit.

A. This is drawings by Moorehead Company that Barker Bros. prepared the plans from and these plans are practically the same as the building is being built now, with the exception of the sky room which is being made larger. I have seen that plan myself but they refused to give me the drawings of it.

Q. You are referring now to plans with the legend on each one of them, each one of the six?

A. This is January 15, 1946, these were made.

Q. The legend "basement plan, hotel building

(Testimony of P. G. Denson.)

for Charles W. Mapes Company, Reno, Nevada, the Moorehead Company, P. T. Moorehead manager of design and construction and F. Harvey Slocum architect, Oakland, California" and the others are marked, "First floor plan," with the same legend, "mezzanine floor [214] plan," "room floor plan," "sky room floor plan," "Virginia Street west elevation."

A. I have a few other sets of these same plans.

Mr. Platt: I dislike to burden the record this way, but I would like to get these plans in evidence and I offer them in evidence as one exhibit.

The Court: Any objection, Mr. Cooke?

Mr. Cooke: I think I will. I know I have some. I will see if I have any more.

The Court: What is the purpose of offering the building plans? I see some reason for offering some plans in regard to the furnishings.

Mr. Platt: Just to show their connection, if the Court please, with the furnishing plans. However, I think the record is pretty clear.

Mr. Denson: You have to have the building plans to make these plans from.

The Court: It might be sufficient to just offer the furnishing plans.

Mr. Platt: I will defer to your Honor's suggestion, just offer the furnishing plans.

The Court: Of course, if you have any definite reason, you may do so.

Mr. Platt: It has been suggested, according to Mr. Denson's testimony, that he made various sug-

(Testimony of P. G. Denson.)

gestions concerning [215] the plans of the building and that these suggestions were adopted.

Q. Let me ask you, Mr. Denson, whether the builder's plans that you were holding in your hand a minute ago comprehended or included your suggestions?

A. Yes, I haven't the plan here of the last change that was made of the size of the sky room. Mr. Moorehead had it but they refused to give it to me.

Q. With that exception these blue plans incorporate all your changes and suggestions?

A. Yes.

Mr. Platt: I think we will offer them.

The Court: You want to offer them all as one exhibit?

Mr. Platt: I think we will offer the blue plans as one exhibit and the furniture plans as the next.

Mr. Cooke: Do I understand you are offering both these blueprints and also this other document?

Mr. Platt: Yes.

A. This is a lay-out of the——

Mr. Platt (interrupting): Let us keep the record straight.

Q. You are holding in your hand, Mr. Denson, another set of plans. What are they?

A. It shows the set-up of the coffee shop, kitchen lay-out and also the dining-room off of the lobby.

Q. Who prepared that set-up?

A. It was prepared by Barker Bros. for Charles W. Mapes Company.

(Testimony of P. G. Denson.)

Q. And was this plan that you are now holding in your hand submitted to Charles W. Mapes by you and the other people present on——

A. (Interrupting): On April 1, 1946, of this year.

Q. This plan——

A. (Interrupting): All of these drawings, every one that I have here.

Q. On April 1, 1946?

A. April 1, 1946, in Mr. Moorehead's office.

Q. And Mr. Charles W. Mapes was present?

A. Mr. Charles W. Mapes and his uncle, Mr. Hart.

Mr. Platt: I think we will offer the Barker Bros. exhibit that Mr. Denson has just testified to. I do not want to burden the record too much.

The Court: Suppose we take our recess now and you can go over these plans with Mr. Denson and see just what you want to offer in the morning. Court will be in recess until tomorrow morning at 10:00 o'clock.

(Court recessed at 4:40 p.m.) [217]

Tuesday, October 29, 1946

Attorneys present as at previous session.

MR. DENSON

resumed the witness stand on further direct examination by Mr. Platt.

Q. For the purpose of the record, at the time of the recess yesterday, Mr. Denson, we were con-

(Testimony of P. G. Denson.)

sidering some maps and blueprints of the hotel. As I understand it, those maps and blueprints were examined in Mr. Moorehead's office in Oakland some time in January of 1946?

A. Yes, I received the prints from the office in January.

Q. And when was the conference held at which Miss Mason, a representative of Barker Bros., and Charles Mapes, Jr., one of the defendants, was among those present?

A. It was April 1st of this year.

Q. And were the blueprints and maps examined at that time and discussed? A. They were.

Q. I wish you would produce the blueprints of the hotel that were examined and discussed at that time.

A. Those are the blueprints of the building.

Mr. Platt: Your Honor, please, I offer these in evidence.

Mr. Cooke: I would like to ask the witness some questions, your Honor.

The Court: You may do so, Mr. Cooke. [218]

By Mr. Cooke:

Q. Who made the blueprints?

A. I couldn't say who made them, but they were furnished me by Mr. Moorehead.

Q. When were they furnished to you by Mr. Moorehead?

A. Mr. Moorehead furnished me plans from January. He furnished me plans before that, 1945 also.



(Testimony of P. G. Denson.)

Q. When were these particular prints furnished you by Mr. Moorehead?

A. The best I can remember those were furnished me in January.

Q. 1946?

A. 1946. In fact, I think Mr. Moorehead presented me three sets of blueprints.

Q. Is this just one set?

A. Yes, one set.

Q. And is this set now in exactly the same condition as it was when given to you by Mr. Moorehead?

A. This particular set?

Q. Yes.

A. Yes, they haven't been changed any.

Q. That is what I asked you.

A. Yes.

Q. You are not a draftsman yourself, are you?

A. Well, I can do some drafting, yes. I have had quite a bit of experience in drafting, but I have always had draftings [219] furnished to me from concerns I have been with. These were made from tracings, I presume, whether made off white paper or linen paper, I couldn't say just which.

Q. Do you know whether the building as constructed is pursuant to the map and plan as shown here?

A. There are probably some changes on these, Mr. Cooke. For instance, this blueprint up here, take the mezzanine here——

Mr. Platt: Pardon me, your Honor. Will you identify this print for the purpose of the record?

A. This is A-2 made on January 15, 1946, is

(Testimony of P. G. Denson.)

the date that is stamped here. This is the first floor plan showing the opening, skylight, from the mezzanine, and it is my understanding that that didn't go in and I objected to it, and do you want me to make statements as I go along?

Q. No, I would rather have you answer the question. The question is whether the building as now constructed is pursuant to the plans?

A. There is some change.

Q. What particular changes can you state?

A. I have never been in the building since they started construction but it is my understanding that this well from the mezzanine floor looking down on the lobby was not put in.

Q. For the purpose of the record, that appears as A-3.      A. A-3.

Q. What is the legend there, can you read that?

A. It is open well.

Q. You would say that was closed?

A. I wouldn't say it is closed but it was supposed to be closed and due to the fact I objected to it—I called——

Q. (Interrupting): I don't care for that now. I just asked you whether it is closed or open now.

A. I couldn't say. It was supposed to be closed up.

Q. But your understanding is it is open?

A. I don't know whether it is.

Q. I say your understanding.

A. No, I didn't say it was my understanding it is open now.

(Testimony of P. G. Denson.)

Q. What is the change, as far as you know?

A. It was supposed to be closed and the opening wasn't supposed to be there.

Q. And you think there is an opening there?

A. No, I wouldn't say there is. I believe it has been closed up, that is my own belief it is.

Q. Are there any other changes in the building as constructed by way of departure from the plan here?

A. I objected to the small check room on the mezzanine floor because it was entirely too small.

Q. Referring to sheet A-3?

A. A-3. Mezzanine floor. That is what is known as the check room.

Q. That, as you understand, has not been constructed as shown [221] on the plan?

A. I couldn't say what they have done in regard to it, but it was my understanding and I was told it would be made larger.

Q. In all other respects you understand the building is constructed according to the blueprint here?

A. I wouldn't say it is, but the majority of it. The banquet room was to be larger than it is called for here.

Q. You mean as constructed?

A. Yes, I think it is constructed larger.

Q. You referred to sheet A-3. What about any other sheets comprised in that offer? Referring to the next sheet, in whatever order they occur there and by whatever legend and designation they may

(Testimony of P. G. Denson.)

carry, and state if there were any changes in construction that you know of from that shown upon the prints?

A. I don't know anything about sheet 4 at all. This is floor plan of rooms and apartments.

Q. Do you know whether or not there ever was a sheet 4?

A. If you will allow me to look at another set of plans I will see if I have a sheet 4. No, there is no sheet 4.

Q. Do you know whether there ever was a sheet f?      A. That I couldn't say,

Q. Well, the next one then would be sheet No. 5. Does the building as constructed, as far as you know, conform to the plans as shown upon that sheet No. 5? [222]

A. This is a general lay-out, Mr. Cooke. I don't know just exactly whether these are the size closets we prepared, but we did have quite a discussion in regard to the size of closets and rooms.

Q. What difference is there in the building now as far as constructed and that shown upon that plan?

A. I couldn't say because I have not been inside the building at all.

Q. You haven't any information as to there being any changes?

A. No, I have never been inside the building since they started construction.

Q. Did you ever talk the matter over with Mr.

(Testimony of P. G. Denson.)

Moorehead, whether the building was constructed according to these plans, any changes made?

A. I was in Mr. Moorehead's office quite a few times since I got these drawings and on the first of April when we first arrived at his office, we spoke about details and dimensions on the drawings and he assured me by the 15th of April there would be detailed drawings furnished to me.

Q. Is that the only discussion you had with him in regard to drawings?

A. No, we discussed the size of the sky room.

Q. I asked you if that is the only discussion?

A. We had a lot of discussions. Practically all morning all we discussed was plans. [223]

Q. What date was that?

A. That was April 1st of this year.

Q. Does the same answer apply to the balance of these sheets here?

A. Well, we will go into this a little more thoroughly if you like.

Q. You are referring now to sheet A-6?

A. That is right.

Q. All right, what about that?

A. It is the sky room and it shows where it goes back in and much smaller back there and over this roof. I can't understand why they didn't carry it out and I was informed a few days afterward and shown the drawings that was carried out. Of course, this lay-out had to be changed accordingly.

So far as this sheet is concerned, it does not show the location of the sky room?

(Testimony of P. G. Denson.)

A. This does show the location of the sky room and I notice under here—I was asking and trying to insist on another elevator, to have three passenger elevators, and I see on here it is proposed to put the shaft in for the time being, but I have been told that they are going to have three passenger elevators.

Q. This shows the present location of the sky room, is that right?

A. This plan was before they had agreed to carry it all the way through here, so I have been informed by the mechanical [224] engineer.

Q. In other words, the sky room takes up the whole floor?      A. That is what I understand.

Q. This is just part?      A. This is part.

Q. Anything more you want to say?

A. I just spoke about the elevator. I understand and have been informed by Mr. Moorehead that the third elevator is going in.

Q. Now referring to sheet No. 8.

A. That is an elevation plan of the building.

Q. There is substantially no particular change in that in any way, do you know?

A. Well, this was a change from the first sketch they got out. They show a basement on it. It is around here somewhere.

Q. That was furnished to you by Mr. Moorehead, you say?

A. I can't remember whether Mr. Moorehead mailed it to me or gave it to me in his office, but I



(Testimony of P. G. Denson.)

was in his office several times looking at drawings. I don't think they will deny that.

Q. You went over those particular prints there?

A. Yes.

Q. And with reference to the date of April 1, 1946, when was it you went over those with Mr. Moorehead?

A. We were in his office with all the drawings by Barker Bros., with the set of plans brought up by Barker Bros. That is what [225] we had to work with.

Q. Do I understand these plans were furnished to you by Barker Bros.?

A. I furnished these to Barker Bros. myself.

Q. You got them first from Mr. Moorehead?

A. That's right.

Q. How long before April 1st did you get those?

A. I didn't get them April 1st.

Q. I said how long before April 1st?

A. Some time in January.

Q. 1946? A. 1946, yes.

Q. How soon after that did you deliver them to Barker Bros.?

A. I delivered them to Barker Bros. as soon as I got them. I can't remember just what date. We have been working on this all the time.

Q. About January——

A. (Interrupting): I couldn't say the date, but I know it was in January, I know that.

Q. And you delivered them to Barker Bros. immediately afterwards, is that right?

(Testimony of P. G. Denson.)

A. Yes. In fact, I was in Barker Bros. quite often.

Q. Were they furnished by Mr. Moorehead for the purpose of being delivered to Barker Bros.?

A. I probably told Mr. Moorehead I was having Barker Bros. get [226] out drawings. It wasn't anything to Mr. Moorehead about where I was taking drawings to. Charles Mapes was supposed to be my associate and I couldn't do anything without submitting drawings and things to him and I had to get drawings to submit to him. I couldn't give an order without Mapes' consent. In fact, all the firms I dealt with——

Q. (Interrupting): I didn't ask you anything about that. If you will answer the question we will get along better.

A. All right, I will answer any question.

Q. How long was it after you delivered those prints to Barker Bros. before you next saw them?

A. I was in there off and on probably every week after that.

Q. How long was it after you delivered it to them did you next see those prints?

A. After they were first given to them I was in there about two weeks after that.

Q. In Barker Bros.?

A. Yes and in February I was in Barker Bros. and spent quite a bit of time in March with Barker Bros. Spent more time in March than any other time.

Q. And all told there were some two or three

(Testimony of P. G. Denson.)

or more occasions that you visited with Barker Bros.?

A. Oh, I presume I was there at least half a dozen times, probably more.

Q. And then on April 1st they brought these prints up? [227]

A. Miss Mason brought them up. She came up on March 31st and I came up on the 31st.

Q. And you had a meeting on April 1st?

A. Yes, April 1st of this year.

Mr. Cooke: The defendants object to the admission in evidence of the offer of the blueprints on the ground the same are irrelevant and immaterial to any issue in the case; that it is an attempt on the part of the plaintiff to change a written contract by parole evidence in violation of the rule; that if the documents are admitted for any purpose whatever, it will be in connection with so-called part performance of some contract which isn't pleaded or shown, some oral contract or addition or oral supplement to the written contract, and in that connection I wish to explain my objection more on the same objections than I have. That the blueprints offered in evidence would constitute a part of the oral evidence relied upon by the plaintiff to supplement or to otherwise add to or change the terms of the written agreement and it is objected to on the ground, first, that under NCL, Section 1527 and 1529 the dynamics of this case must be based exclusively upon the September 24, 1945 instrument; second, the September 24, 1945 agreement is vague

(Testimony of P. G. Denson.)

and indecisive and the same is unenforceable as to any consideration not expressed upon the face of the writing; third, the September 24, 1945 agreement, being in writing, the same can not be altered, added to or varied [228] by parole evidence; fourth, the plaintiff's plea of part performance and evidence offered thereunder is inadmissible, irrelevant and immaterial because no showing is made that the alleged part performance is of anything required by the alleged oral agreement to be done by plaintiff, but at most shows things done by the plaintiff in reliance upon the alleged oral agreement; fifth, no consideration is either alleged or claimed under Exhibit A. It seems to me, your Honor, we have reached a rather serious pass. Here we have established that, except as to leases for a term not exceeding one year, no agreement affecting real property, or creating any right or trust or power concerning the same, shall be valid for any purposes except by an instrument in writing, signed by the party to be charged. That is our statute of authorities. I give it from memory, 1527 I think is the number. That simply means a mandate from the law-making body that with reference to the instruments included in the statute, all of them except leases for a term of less than one year, that the only evidence the Court is entitled to consider is a written document signed by the parties, so that so far as the statute itself is concerned, it must be admitted that any attempt to bring in evidence such as is now sought to be brought in by the

(Testimony of P. G. Denson.)

plaintiff, would be in violation of that statute. The statute provides, however, in another section that this rule shall not prevent a court from enforcing an agreement where part performance is [229] shown. The court has heard what part performance consists of. Part performance must first show a contract, because you can't perform something that isn't contracted to be done. Here we have a written contract admittedly, such as it is. Whether it is complete or not is a matter to be discussed by counsel and the authorities, but admittedly there is nothing in that written contract that requires him to do any of the things that we listened to practically all day yesterday and I expect we will listen to more of it yet. If the written contract had provided that Mr. Denson was to see to the getting of prints for this job and was to do this and that and to sell his hotel in Visalia and then he goes on and shows that he did those things, that would be a part performance of the written contract, but that is not what the suit is for. What the suit is for is part performance of an alleged oral agreement, so that these things, so that as I see it in this case, before this Court or any other court will be entitled to go ahead and listen to this type of evidence, there first has to be evidence of some kind of oral contract whereby Mr. Denson was requested to do this that and the other thing and then he goes and shows that he actually performed the things that the oral contract called on him to perform, then you would have a case of part performance, but there



(Testimony of P. G. Denson.)

can not be part performance of something not required to be performed and there is nothing in any oral agreement or understanding anything [230] should be done in preparation of the maps. Ordinarily we think courts take judicial notice of that fact. The architect for the building and contractor, like Mr. Moorehead and Mr. Slocum, they would be the ones to prepare plans for the building and not Barker Bros., and not even Mr. Denson, who is simply a prospective lessee, if he was that, so that wasn't any of his business to concern himself about that. Of course, if he wanted to, that is all right, but to bring it in here as part of a part performance proposition, we think is entirely uninvited and by the parole evidence rule you can not allege that in any way by anything said. We listened to quite a bit of evidence yesterday and this is more coming in this morning, in regard to what was done and said. It has to give some kind of showing, some kind of charge in that written contract that this was waived and that the parties agreed upon the changes and he spent this time on the Mapes and had conferences with the interior decorator, etc., and that is part performance. Of what? Has your Honor heard any testimony in this case as to anything required of him, that they called upon him to do any of these acts? If he volunteered to go out and do them, that is not part performance. Part performance is only those things required to be performed and nothing was required here of Mr. Denson. Hence we say this objection ought to be



(Testimony of P. G. Denson.)

sustained and all this testimony eliminated and the case decided squarely upon the terms of that written document. We are on [231] dangerous ground. That is our view of it, your Honor.

The Court: This is a thought that entered into my mind in overruling some of the objections that were made on similar grounds. The complaint charges that the plaintiff has no plain, speedy or adequate remedy at law. That is one of the questions, of course, we are going to have to decide in this case, to determine whether or not it is a proper case for a decree of specific performance. Now to aid in coming to some conclusion in regard to that question, wouldn't evidence of the detriment that may or may not be suffered, or would be suffered if this contract is not carried out be considered, with the idea of the Court coming to some conclusion as to what the detriment, if any, has been and whether there is an adequate remedy at law.

Mr. Cooke: Well, in answer to that, I think not.

The Court: Isn't that one of the elements that could be considered in an action for breach of a contract, detriment suffered?

Mr. Cooke: Well, in this case Mr. Denson spent certain time with these blueprints. That, of itself, would not be any part performance because that would be action for dollars and cents. His time, we will say, is worth \$10 or \$20 [232] a day—

The Court: Isn't that a question outside the scope of any question of part performance?

Mr. Cooke: What I am trying to get, your

(Testimony of P. G. Denson.)

Honor, is that they have to show an oral contract that is to be wholly performed. The written contract speaks for itself. These things must be upon some oral agreement.

The Court: If the Court agreed entirely with the points raised in your objection, I still believe the evidence would be admissible, on the theory the Court is entitled to know in this case, first, there has been a written contract shown and it is evident there is inclination on the part of the defendant not to comply with it, and now, what, if any, damage has resulted to the plaintiff and is that damage, if any, subject to being compensated for in dollars and cents, getting back to the question of whether there is an adequate remedy at law that should be pursued and whether or not the decree of specific performance could be granted. That is the point I have in mind.

Mr. Cooke: I think I get your Honor's meaning, but in answer to that I would say this: this is not an action for damages, it is an action for specific performance. The plaintiff [233] does not want any damages. He has repudiated the idea of asking for damages in this case by demanding for specific performance he had by a lease being authorized to him and Charles W. Mapes, Jr., and if Charles Mapes does not want it, he alone, and that he is able to go ahead and that in a nutshell is the upshot of his case, he wants the lease in his own name. It isn't a case of damages, the prayer shows that.

(Testimony of P. G. Denson.)

The Court: I know that. Pardon me a moment—I may be incorrect in regard to the law governing this case, but my impression is, subject, of course to arguments and consideration on any points that counsel on either side may advance, but my idea in this case is this; if the evidence in this case discloses that there was a contract, which I think is admitted, and if the evidence also shows that the defendant does not intend to comply with the terms of that contract, or if it shows that the defendants have repudiated and continue in the repudiation of the contract, what damages, what detriment has been suffered by the plaintiff, and can it be compensated for in dollars and cents, and if it can, my position would be to refuse decree of specific performance. There will be adequate remedy at law that should be pursued. [234]

Mr. Cooke: I think your Honor is right in at least part and maybe all, but it is our contention, based upon the authorities such as we found them, rather unanimous, however, and I hardly think there is any question that the authorities are not unanimous, but where a suit for specific performance is brought a Court will not retain the case for the purpose of awarding damages.

The Court: There would be no idea in my mind to try to retain the case to award damages, but if I found—that is my present impression and I would like to have counsel understand it, so if I am wrong they can take note of it and cite authorities to the contrary, that if this case discloses to my mind and

(Testimony of P. G. Denson.)

I come to the conclusion that there first has been a contract that has been violated, breached and repudiated, that the detriment suffered can be adequately compensated by dollars and cents, I am going to decline to grant a decree of specific performance.

Mr. Cooke: In other words, that ends the case.

The Court: As far as I am concerned, and that is the way I am going to admit this testimony. As I understand, I do not think it is disputed there is a contract, second, it is being and [235] has been repudiated and I want to find out what the plaintiff has suffered in consequence of the breach, and then if that suffering can be made whole by dollars and cents, I would then follow that with a denial of the prayer of the complaint.

Mr. Cooke: Your Honor has assumed, it seems to me, that there is a contract to start with. There is a document here, it is true, but the document on its face shows it is not a contract, but simply a preliminary negotiation that was intended to lead up to a contract, provided the parties could agree, so we take the stand there was not an agreement. That document does not constitute an agreement, unless it is an agreement to get together and see if they could agree, but that is not an agreement under the authorities that would bind anybody.

The Court: I merely made this statement to explain why I am going to admit this testimony and so counsel, if they believe my theory as now stated is incorrect, may have plenty of opportunity

(Testimony of P. G. Denson.)

to cite authorities and I assure them I am not one who will hesitate to drop down from my position and try to get on the right track.

Mr. Cooke: We would like at this time, your Honor has mentioned the fact of repudiation, to state that we are [236] not disposed to accept the rule of repudiation at all, because there is nothing to repudiate. We were carrying out the agreement and trying to get this man together on terms of a lease, but the document itself does not constitute any agreement, either at law or equity, and we have a vast amount of authority on that, so we are not repudiating.

The Court: The objection will be overruled and the exhibit will be admitted in evidence as Plaintiff's Exhibit D.

Q. Mr. Denson, that Exhibit "D," which constitutes the blueprints, was examined by you and Charles Mapes and Miss Mason and the persons who were represented at the conference in Oakland in Mr. Moorehead's office?

Mr. Cooke: I do not think it is necessary to lead the witness. I object to it as leading.

The Court: Objection will be overruled.

A. As I think I stated yesterday——

Q. (Interrupting): Answer the question.

A. Yes, they were all examined by the parties that you spoke of.

Q. And did Miss Mason submit any plans?

A. She did.



(Testimony of P. G. Denson.)

Q. And have you the plans that she submitted?

A. I have.

Q. Will you produce them? [237]

A. It shows more or less the picture of the coffee shop.

Q. Well, one of these is marked, "Submitted by Barker Bros. Hotel and Apartment Division. Proposed Coffee Shop for Charles W. Mapes Company, Reno, Nevada." The other one has the legend, "Furniture Lay-out for Typical Hotel Rooms, C. W. Mapes Company, Reno, Nevada, Submitted by Barker Bros. Hotel and Apartment Division." We offer them in evidence.

Q. (By Mr. Cooke): What did you have to do with the preparation of these?

A. They were submitted to me at various times. In fact, we went over things in regard to ideas and lay-out of furniture, and I worked with Barker Bros. on that.

Q. What did you have to do with the preparation of them, anything at all?

A. Nothing in preparing them, I didn't at all, but I passed on them and informed them that I would submit them to Charles for his approval.

Mr. Cooke: I am going to ask to strike out the latter part of that answer as not responsive.

The Court: The answer may stand.

A. I didn't prepare any of them.

Q. Who did prepare them, if you know?

A. By parties in Barker Bros.



(Testimony of P. G. Denson.)

Q. And these were part of the papers that Miss Mason brought [238] up on this occasion?

A. Miss Mason brought those up. She brought them up on April 1st but she took them back to Los Angeles. I got them at Barker Bros. afterwards.

Mr. Cooke: We object to the admission in evidence, upon the grounds it is irrelevant and immaterial, all and singular the objections stated to the offer of Exhibit D, and on the further ground it is not shown that this witness had anything to do, spent any time or work or effort in connection with them. The things were done by Barker Bros., who were looking for a chance to sell some furniture, I suppose, and were willing to do this work, and he gets this map from them and used on that conference, but in what way that can constitute any part performance or have any fundamental value to your Honor on any theory of the case, we submit is far from clear; in fact, does not exist at all. If he had found these things in the garbage, it would have been the same thing. In fact, it would have been more effort to get them in that way than the way he did. I understand your Honor's theory of this case is, and I am in harmony with the general proposition, that if Mr. Denson, for instance, has expended time and effort, that should be considered in the case, either in connection with the matter of remedy in law or by specific performance, but if no time was expended, nothing done by him at all, somebody puts a drawing in his hands to bring in here [239] and he says, "I want specific perform-

(Testimony of P. G. Denson.)

ance” and I say, “How did you get them, who furnished them, what did you have to do with them?” and he says, “Nothing.” In what way can that help the Court in determining that he is entitled to any equitable relief or any relief of any kind? If he spent five or ten days or one hour in the actual work in preparing them, he could testify to that and then find out what his time was worth and have a case for damages or value recoverable perhaps, but he does not even spend one hour or any time on this.

The Court: The objection will be overruled and exhibit admitted as Plaintiff’s Exhibit E.

### Direct Examination

(Continued)

By Mr. Platt:

Q. Did you make any effort to obtain plans from the Dohrmann Company in San Francisco?

A. I did.

Q. And about when did you do that?

A. The first part of January.

Q. 1946?

A. Yes, also in December I visited Barker Bros.

Q. I am not asking about Barker Bros.

A. I mean Dohrmann Hotel Supply Company, and they made up plans for the kitchen lay-out. We were anxious to get those out. They thought it might help them in laying out the openings in the kitchen as the building was being constructed.

(Testimony of P. G. Denson.)

Q. Were those plans submitted by the Dohrmann Company to you? [240]

A. Yes, they were.

Q. And did you in turn submit them to any one of the defendants, Charles W. Mapes or Irene Gladys Mapes or Gloria Mapes?

A. I wouldn't say that they were submitted to Mrs. Mapes, but they were shown to Charles.

Q. When were they shown to Charles?

A. In Mr. Moorehead's office.

Q. On what occasion?

A. Well, I had some of those—I think I furnished them to Mr. Moorhead's office. I am positive Charles had seen them. I can't say he was there when they were furnished—whether in April of this year when we went over other things, but we were getting designs from—

Mr. Cook (Interrupting): Objected to as not responsive.

Q. Just a minute—do you recall whether you submitted plans from Dohrmann's to Charles W. Mapes?

Mr. Cooke: We submit he has already answered the question.

Mr. Platt: I don't think he has.

The Court: You may answer the question.

A. I have shown Charles practically all the plans I had made.

Mr. Cooke: We move to strike as not responsive to the question.

(Testimony of P. G. Denson.)

The Court: I do not believe it is responsive.

Q. Do you know whether you submitted plans from the Dohrmann people to Charles W. Mapes?

A. I did.

Q. Do you remember when you did?

A. It is hard to remember just what dates they were, but they were after the plans were drawn.

Q. Will you produce them?

A. There are some here dated January 7th.

Q. You submit plan with the legend, "Dohr. Co. Floor Plan." Underneath, "Dohrmann Hotel Supply Co. No. 215-5604," and another plan with the legend, "Diagonal Seating Arrangement" and the last one, "Proposed Floor Plan 215-5669." We offer that as one exhibit.

Q. (By Mr. Cooke): Who did the actual work of preparing these various prints, or what do you call them?

A. That is a sketch. I wouldn't say just what draftsman at Dohrmann's did it. I dealt with Mr. Wilson and Mr.——

Q. You personally didn't have anything to do with that?      A. I did not.

Q. With any of them?

A. Not so far as making them. They were submitted to me for my approval.

Q. By Dohrmann's?

A. By Dohrmann's. [242]

Q. When were they made by Dohrmann's?

A. The dates are on there.

(Testimony of P. G. Denson.)

Q. I don't see any date. Were they all made at the same time as far as you know?

A. I can't say.

Q. All handed to you together, were they?

A. At different times. This one here is March 18th. That one there I think is January 7th of this year.

Mr. Platt: March 18th of this year?

A. One is March 18th of this year, that last one.

Q. (By Mr. Cooke): I see the legend, "Drawn by Wilson & Hegberg." Those were, as far as you know, the draftsmen in the employ of Dohrmann Hotel Company?

A. Wilson I am very familiar with. I have met Hegberg.

Q. That is his business?

A. That is his business.

Q. I notice this is for Peter Denson, architect. In what way did that part of the legend happen to be on there? Did you request that?

A. They were made for me. I instructed them to make them up.

Mr. Cooke: Defendants object to the admission in evidence of the offer of the sketches on the ground that it affirmatively appears the plaintiff in this case had nothing to do with the actual work of preparing them, spent no time on them. They were furnished to him gratis, so far as the evidence [243] shows, by the Dohrmann Hotel Supply Company people and for that reason they would be immaterial on the question of damages. They are immate-

(Testimony of P. G. Denson.)

rial for each and all of the reasons stated to objections which we made on previous offers, which we would like to have repeated and made here to the same effect as if repeated.

The Court: The same ruling, objection overruled and admitted as Plaintiff's Exhibit F.

Direct Examination

(Continued)

By Mr. Platt:

Q. The plans that you are now submitting, state the nature and character of them and who furnished them.

A. These are the first lay-outs of the first floor, showing the lay-out of the coffee shop, the kitchen lay-out and also the dining room.

Q. Who submitted that plan?

A. Barker Bros. submitted this to me and they were made for Charles W. Mapes Company. That was my instructions to them. There is one there and here are over a half dozen here from the ground floor right on up, including this sky room.

Q. Submitted by Barker Bros.?

A. By Barker Bros.

Q. And were the plans called to the attention of Charles W. Mapes?

A. These were all shown to Charles W. Mapes, Mr. Moorehead, [244] Mr. Slocum, in fact, Mr. Moorehead's entire staff, on April 1st. Mr. Hart, his uncle, was with us.

Mr. Cooke: Who was that?



(Testimony of P. G. Denson.)

A. Mrs. Mapes' brother, Mr. Hart, I feel that that was his name, I am not quite positive.

Q. (By Mr. Platt): And this group of plans that you have just submitted was all submitted upon that occasion on April 1, 1946, and was there any discussion had with respect to the plans?

A. The plans were discussed fully over two hours, I would say, two and one-half hours, I don't remember just the exact time. I think we were there between 9:00 and 10:00. Mr. Moorehead and the rest of them can verify that.

Q. And did the defendant, Charles W. Mapes, Jr., participate in the discussion?

A. Absolutely.

Mr. Platt: We offer these plans in evidence as one exhibit.

Q. (By Mr. Cooke): I think you told us these were prepared by Barker Bros.?

A. By Barker Bros.

Q. They were prepared by Barker Bros. with the tentative promise or arrangement that they would have a chance to furnish some furniture?

A. They were promised nothing. [245]

Q. Didn't you have any tentative arrangement with them?

A. No, I did not promise. They had been notified I couldn't place an order—Charles Mapes and Mrs. Mapes both knew——

Q. (Interrupting): You didn't pay them anything for these? A. No, I haven't.

Q. You are not obligated to pay them anything?

(Testimony of P. G. Denson.)

A. I am not obligated. I have done business with Barker Bros. for many years.

Mr. Cooke: We ask that be stricken.

The Court: That may be stricken.

Q. What date were these prepared, as far as you know, Mr. Denson?

A. They worked on these plans off and on January, February, and March. I think they had around three different ones working there during the first part of March to get the plans out.

Q. When did you first see them in the condition and form they are in now?

A. We made many changes. I saw them off and on for some time through the month of March.

Q. How are the changes noted?

A. The changes are not noted on here. They had me in there several times, Mr. Cooke, looking them over.

Q. In Los Angeles? A. Yes.

Q. But in their completed form, so far as they are completed, [246] when did you first see them?

A. These are not detailed drawings, just something proposed, an idea, that is all.

Q. When did you first see this exhibit here in its present form?

A. Some time in March. I couldn't say just what date.

Q. And when did you first take them up with any of the defendants or with Mr. Moorehead?

A. April 1st of this year.

Q. You had them from this time in March when

(Testimony of P. G. Denson.)

you got them down to April 1st before you took them up with any of the Mapes?

A. I was with them on these drawings. They were submitted to me before April 1st by Barker Bros. in Los Angeles.

Q. You got them some time in March?

A. I didn't say I got them some time in March.

Q. When did you get this particular document that is offered in evidence?

A. I think they were given to me the latter part of April or May. I think I picked them up in Los Angeles and brought them up.

Q. The latter part of April or May?

A. Of this year.

Q. And did you have them in your possession at all prior to that time? [247]

A. I have had them in my possession ever since I picked them up at Barker Bros. to bring them up.

Q. You had them on April 1st?

A. I didn't get them on April 1st. The designer brought them to San Francisco on March 31st and they were shown to Charles Mapes on April 1st.

Q. The people who were at that meeting used these papers, they had them there present?

A. They looked over all these drawings, every one I have here.

Q. And then they were returned to Barker Bros.?

A. That is right.

Q. And then you got them from Barker Bros. and brought them up here?

A. That's right.

(Testimony of P. G. Denson.)

Q. Do you know whether or not the building was constructed in conformity with the designs and drawing?

A. As far as I know of that particular lay-out on the first floor they are. There may be a few little changes in regard to where the coffee shop was supposed to be.

Q. Do you know from what source Barker Bros. got their information from which they made this?

A. They took that from drawings made by T. P. Moorehead Company.

Q. From whom did they get those blueprints?

A. From me. [248]

Q. Then all you had to do with this document here was to furnish the blueprints that Mr. Moorehead furnished you to Barker Bros. and then to receive the lay-outs, as you call it, from Barker Bros. draftsmen through Miss Mason, was it, who brought them up at the meeting on April 1st, and then they were returned to Barker Bros. and then you got them later on and brought them up here?

A. I worked with them on the drawings. I didn't actually make the drawings but I sat in with them on several occasions and made changes. The changes wouldn't show on there.

Q. You mean there is a difference between this lay-out here and the drawings by Mr. Moorehead, the blueprint?

A. Oh, no. The drawings that Mr. Moorehead made doesn't show any of this lay-out. He just

(Testimony of P. G. Denson.)

shows the wall heights and spaces he was giving us to work with and that is what we used.

Q. Then from what source did Barker Bros. get the material to put on this map?

A. This is sketched from the blueprints. They made the sketch itself, according to dimensions they had on the blueprint.

Q. How much time did you spend on the job?

A. Quite a bit. I was in Barker Bros. off and on for some time.

Q. Can you tell us anything about the dates?

A. I was with them for the month of March right through, I would say two or three times each week up until the time I [248] left there on the 31st of March.

Q. How much time did you spend there each week?

A. Around two to three hours each sitting.

Q. What was the name of the man that you worked with?

A. Earl Crawford, the manager, Miss Mason, and it is hard to recall the names of the other two parties that did some of this work. I don't remember just the names, but they can be furnished.

Q. What I want to get is the time you spent with men down there that did this work.

A. All my time was spent with Miss Mason in the drafting room and also with Mr. Crawford's office, looking over various designs they got out.

Q. Who is Mr. Crawford?

(Testimony of P. G. Denson.)

A. Manager of the wholesale department of Barker Bros.

Q. Can you tell us any nearer than you already have as to the time you spent with draftsmen on this exhibit?

A. Two to three hours each time I called.

Q. That would be two or three times a week?

A. Yes.

Q. Two or three hours each time?

A. That's right.

Q. Two or three times a week?

A. That's right.

Q. You don't know how many weeks? [250]

A. All through March, 1946.

Q. You can't tell us the name of the man you spent this time with, the draftsman?

A. Mr. Crawford and Miss Mason I spent most of my time with them. The other fellows would be in Mr. Crawford's office, going over the things with him.

Q. Mr. Crawford was general manager——

A. (Interrupting): He was right there.

Q. He didn't have anything to do with drafting?

A. No, he didn't draft.

Q. Can you tell me how much time was spent by you?

A. I just told you that; two to three hours each time the different times I called at Barker Bros.

Q. Now listen to the question. That is the time you spent with the man who was doing the drafting for Barker Bros., was it?



(Testimony of P. G. Denson.)

A. Well, I would say yes.

Q. You don't know his name? A. No.

Q. Was there more than one?

A. I think three altogether that worked on these.

Q. You don't know the name of any of them?

A. I did know but I can't remember just what their names are.

Mr. Cooke: We object to the admission in evidence of the document, your Honor please, on the ground no proper [251] foundation has been laid to show that the witness had anything to do with the work shown upon it; that in any event it is irrelevant and immaterial and does not prove or tend to prove any issue in the case, and here we repeat jointly and singularly the objections that we made to the previous offers and ask that they be considered without being repeated.

The Court: They may be so considered. The objection is overruled and the exhibit admitted in evidence as Plaintiff's Exhibit G.

Mr. Platt: Because of your Honor's rulings, I am not attempting to answer Mr. Cooke's arguments at this time. Your Honor has admitted the exhibits in evidence subject to objections, so that the objections will be argued later.

The Court: The objections have been overruled. This evidence is all in under reserved ruling on the first objection made at the beginning of the case.

Mr. Platt: That is right.

Witness: Those are part of the drawings made by Barker Bros.

(Testimony of P. G. Denson.)

Mr. Cooke: I would like to see them.

Mr. Platt: You may examine them if you like. They lay right there on the desk.

Mr. Cooke: Well, there are lots of drawings on the desk I didn't know were offered. [252]

Q. (By Mr. Cooke): One of these sketches that seems to be embraced in this offer has a legend, "Room Floor Plan East Wing Hotel Building, Charles W. Mapes Company, Reno, Nevada," is that prepared by Barker Bros. in the same manner and under the same conditions as the other portion of the exhibit you testified about? A. Yes, sir.

Q. And was delivered to you along the same way? A. Yes, sir.

Q. And brought to the April meeting by Miss Mason? A. That's right.

Q. And the explanation you made all applies here? A. All applies.

Q. And is that also true with the other sheets and sketches?

A. Let me see if there are any other sketches.

Q. I call your attention to one marked, "Bar, Sky Room, Chas. W. Mapes Company, Reno, Nevada," was that prepared by Barker Bros.' draftsmen? A. It was.

Q. Under the same condition as applied to the other portion of the exhibit I asked you about?

A. That's right.

Q. Now the next one has a legend, "Barker Bros. Hotel Division, Los Angeles, Cal.," that is the only legend there is there so far as I can see.

(Testimony of P. G. Denson.)

Anyway, that is one of the documents [253] prepared by Barker Bros. and submitted at the same time and under the same conditions?

A. April 1st, yes.

Q. This one here has the legend, "Casino Bar Street Floor, C. W. Mapes Hotel, Reno, Nevada." Is that one of the sketches that was prepared by Barker Bros. that you testified to? A. It is.

Q. At the same time and in the same manner and under the same conditions? A. Yes.

Q. And this one has a legend, "Submitted by Barker Bros. Hotel and Apartment Division" and that also has legend, "Proposed Lay-out C. W. Mapes Hotel, Reno, Nevada." That was prepared by Barker Bros.? A. It was.

Q. At the same time and under the same conditions? A. That is correct.

Q. And used in the same way that you testified in regard to the others? A. That is correct.

Q. The other one has the legend, "Proposed Plan First Floor Charles W. Mapes, Reno, Nevada, Submitted by Barker Bros. Hotel and Apartment House Division, Los Angeles, Cal." Does the same answer apply to that, Mr. Denson?

A. The same. [254]

Q. At the time you had that meeting on April 1st and these were all examined as you told us and discussed by the various members present, were any changes suggested in the discussion?

A. There were many discussions. We were in Mr. Moorehead's office from the time they arrived

(Testimony of P. G. Denson.)

at 9:30 or 10:00 o'clock until at least around 12:00 o'clock.

Q. In order that we get the record clear on this, one portion of it has been stuck on and the portion stuck on carries the legend, "Submitted by Barker Bros. Hotel and Apartment House Division, Los Angeles, Quarter Inch to One Foot", and has the further legend, "Proposed Lay-out Top Floor, Service Way and Casino, C. W. Mapes Company Hotel, Reno, Nevada" and down in the corner is marked "3-29-46". That is one of the papers, I understand you to say was prepared by Barker Bros.?

A. That is right.

Q. At the same time and under the same conditions and used at this meeting as you have already testified to?

A. That is true.

Q. And all the answers you gave in regard to the others will apply to this?

A. That is right.

Q. At the meeting that was held on April 1st, 1946, in San Francisco when Miss Mason was there with these papers, were the drawings or lay-outs as shown by these sketches and prints criticized by anybody?

A. There might have been some criticism. I wouldn't attempt to say just what they were, but they were looked over. These were just proposed drawings. They were looked over, subject to approval. Now this is a mezzanine lay-out by Barker Bros. for the banquet room.

(Testimony of P. G. Denson.)

Q. This has a legend, "Banquet Room, Mezazine Floor, Chas. W. Mapes Company Hotel Reno, Nevada, Suggested Furnishings by Barker Bros. Hotel Division, Los Angeles, Cal." I note there are quite a number of lead pencil notes on it.

Q. Well, what you see there was made by Miss Mason right in Mr. Moorehead's office that day in regard to some notes that she and Mr. Slocum and Mr. Moorehead had discussed. She made quite a few little changes on my instructions.

Q. That was one of the sketches prepared in Los Angeles?

A. Yes, and submitted at that particular date.

Q. And the same answer that applies to the previous exhibits applies there too?

A. That is correct.

Q. Do you know anything about any of these things shown on these sketches that was carried into the building?

A. I couldn't answer that.

Q. You don't know whether they were of any real value at all?

A. Well, they were very valuable to me.

Q. I mean any value to the construction of the building?

A. Well, some——

Q. (Interrupting) You say valuable to you, in what way?

A. They would have been valuable to Charles and myself in regard to particular lay-outs and furnishings.

(Testimony of P. G. Denson.)

Q. You mean in getting the kind of furnishings and so forth?

A. Everything.

Q. That these would have been valuable to you?

A. Yes, they would.

Q. This one has a legend, "Room Floor Plan Hotel Building for Chas. W. Mapes Co., Reno, Nevada" down in the right-hand corner?

A. Yes.

Q. And that purports to be what, as far as you can tell?

A. Typical floor plan showing apartments layout, out, kitchenette, dinnette, living room and closet space.

Q. Any particular floor?

A. Well, that is over on this wing, on this side, over here on the river side.

Q. On the south side of the building?

A. Wait a minute, let me get this correct. I think this is Virginia Street.

Q. What do you mean by "this"?

A. These rooms here. These are rooms on the Virginia Street side. This plan showing this layout.

Q. The bottom of the sketch shows stores on Virginia Street?

A. It doesn't show the stores. These are rooms. This is an apartment here and this is an apartment here, right where the [257] elevators would be.

Q. The bottom of that is on the Virginia Street side?



(Testimony of P. G. Denson.)

Mr. Platt: I object to this line of testimony. It is taking up an unnecessary amount of time.

The Court: The witness has already answered the question.

Mr. Platt: I object to further testimony along this line.

The Court: Objection will be overruled.

Q. (By Mr. Cooke): This plan that you hand me now has the legend, "Sky Room," Hotel for Chas. W. Mapes Company, Reno, Nevada, Suggested Furnishings," is that—

A. (Interrupting): It is a proposed lay-out.

Q. No, this word, can you read it?

A. Suggested furnishings.

Q. "Suggested Furnishings by Barker Bros. Hotel Division, Los Angeles, Cal." What does that exhibit represent, so far as you know?

A. This is over in the dining room and this would be the cocktail lounge, I presume that is the southwest corner.

Q. That is on the top floor of the sky room?

A. That is right, the Sky Room. This is the cocktail lounge on that side. The proposed lay-out and bar, tables and chairs.

Q. And this was prepared by Barker Bros. under the same conditions as you testified? [258]

A. That is right.

Mr. Cooke: I object to the admission in evidence of Exhibit G.

Mr. Platt: They are all from Barker Bros. and I suggest they be included as one exhibit.

(Testimony of P. G. Denson.)

The Court: Mr. Cooke is entitled to make objection. It will be marked G-1.

Mr. Cooke: Then my objection goes to the offer of G-1, on the ground it is irrelevant and immaterial, does not show the witness had anything to do with the preparation, did not spend any time or money in securing the same, does not constitute any part performance of anything. They aren't evidence of anything at all. They tend to vary from the written agreement to prove by parole what must come under the statute of writings. We repeat the objection heretofore made to preceding offers, Exhibits F and E.

The Court: The objections heretofore made may be deemed to be included in this objection and this objection will be overruled. The exhibit will be admitted in evidence as Plaintiff's Exhibit G-1.

### Direct Examination

(Continued)

By Mr. Platt:

Q. Mr. Denson, did you obtain plans from any other sources for furnishings and equipment?

A. I went to Mangrum-Holbrook & Elkus in San Francisco.

Q. Did they submit any plans to you?

A. They did.

Q. When did they do that?

A. Mangrum-Holbrook & Elkus' plan is dated March 13, 1946.

Q. Did you discuss the plan that you hold in

(Testimony of P. G. Denson.)

your hand with Charles Mapes, one of the defendants?

A. I wouldn't say that I discussed it with Charles but I feel assured that these plans were shown to the builder, Mr. Moorehead and Mr. Slocum.

Q. But you are not certain that they were shown to Charles W. Mapes?

A. I would not be positive.

Q. Or any other defendant?

A. No.

Q. And they were prepared at your request?

A. They were.

Q. Mr. Denson, have you had any correspondence with the defendant, Charles W. Mapes, Jr.?

A. Yes, some. Not very much; mostly our communications were more or less by phone, but I have received letters from him.

Q. Have you in your possession now any letters received from Charles W. Mapes?

A. I think I have.

Q. You have handed me a letter which you state was received from Charles W. Mapes, dated November 20th, no year date but the envelope containing the letter bears date Reno, Nevada, November 21, 4:30 p. m., 1945, and another letter dated Monday, December 3rd, enclosed in an envelope, the month indicated as December, the day undecipherable but the year 1945. Do these letters both refer to your hotel operations?

Mr. Cooke: I object.

(Testimony of P. G. Denson.)

Mr. Platt: Well, I am trying to lay foundation for their introduction.

Mr. Cooke: That is not the way to do it, get the contents in before the offer.

The Court: He may answer this question.

A. What is the question?

Q. Do these letters refer to your hotel operations?

A. About what is going on over here in Reno in regard to the building and also in regard to my wishes, if I was getting my sale through satisfactorily, and things in general.

Mr. Cooke: I move that be stricken, contents of a written document.

The Court: It may go out.

Q. I want to ask you again, Mr. Denson, do those letters refer to your contractual relations with the defendants in this case, with respect to the management of the hotel contemplated in Reno?

Mr. Cooke: I repeat the objection. [261]

The Court: Objection will be sustained.

Q. Well, to what do these letters refer?

Mr. Cooke: Object. They show for themselves.

The Court: Same ruling, objection sustained.

Q. Do you know the handwriting of Charles W. Mapes?

A. I do.

Q. I hand you a letter dated November 20th and ask you whether that is his handwriting?

A. It is.

(Testimony of P. G. Denson.)

Q. I show you a letter dated December 3rd and ask you to testify whether that is his handwriting?

A. It is.

Mr. Platt: We offer them in evidence, your Honor.

Mr. Cooke: Mr. Platt, are you offering both of these as one exhibit or separately, the two letters?

Mr. Platt: I think it might save the record to offer as one exhibit.

The Court: Would you have a different objection to make to one than the other?

Mr. Cooke: No, the same objection would apply. The defendants object to the admission in evidence of the two letters referred to in the offer on the ground that they are irrevelant and immaterial and contain nothing of fundimental value in the case, tend to prove no issue in the case. They purport to be letters written by Charles W. Mapes to Mr. Denson as to condition of the building, progressing, and difficulties met with in regard to the purchase of the 12 feet, and similar matters.

Mr. Platt: If the Court please, the purpose of the offered exhibits is to establish some of the allegations of the complaint, or to put it another way—the letters have bearing upon evidentiary value in support of some of the allegations of the complaint. The complaint alleges that the plaintiff was led on to believe, by words, act and conduct on the part of the defendants, that the lease would be granted and these letters are indications of the fact that the defendants were cooperating clear up to December,

(Testimony of P. G. Denson.)

1945, two months after the contract was signed, in complimenting the plaintiff and keeping under cordial relations with him and indicating through correspondence that the contract or lease would ultimately be granted. They are also introduced for another purpose, and that is to tend to establish the allegations of the complaint that the time element in the contract has been waived. The letters indicate that they are still conversing, they are still corresponding, they are still negotiating, toward carrying out the essential and important elements of the contract and the letters strongly indicate that. We have also alleged in the complaint that one of the acts showing a conduct and attitude of the defendants toward this plaintiff and evidencing waiver of the time element and likewise establishing by word, act, and conduct their intention to carry out their agreement, we allege in the complaint that they caused to be published in both of the local newspapers a cut or drawing of the proposed building, with an article mentioning Mr. Denson, the plaintiff here, as one of the managers at least of the hotel and one of these letters refers to that fact, that these cuts and drawings or articles or something will be sent to Mr. Denson. And we feel, if the Court please, that these letters have evidentiary bearing upon these particular and essential elements of the complaint.

Mr. Sinai: May I suggest further to the Court that the letters also show that Mr. Mapes was cognizant of the fact that Mr. Denson sold his hotel, or



(Testimony of P. G. Denson.)

was in the process of selling his hotel in Visalia, California, as also alleged in the complaint, preliminary to taking charge, or in the process of taking charge of the hotel property here and is an important matter in setting up the partial performance.

The Court: The exhibit may be admitted in evidence as Exhibit H, the two letters as one exhibit. We might as well take our noon recess before we launch out on another branch.

Mr. Platt: May I reserve the right to request the letters be read into the record?

The Court: Yes, you may read the letters.

(Recess taken at 12:00 noon.) [264]

Afternoon Session — 2 P. M.

October 29, 1946

MR. DENSON

resumed the witness stand, on further direct examination by Mr. Platt.

Mr. Platt: With your Honor's permission, I would like to read those letters into the record.

The Court: Yes.

Mr. Platt: Letter dated November 20th (reads from Exhibit H.) The next is dated Monday, December 3rd (reads from exhibit H.)

Q. Mr. Denson, do you know what Charles was referring when he mentioned that he hoped your sale was progressing?

A. Oh, yes.

(Testimony of P. G. Denson.)

Q. To what?

A. He knew that I was selling the hotel down there.

Q. Down where?

A. At Visalia, California.

Q. What did you tell him, if at all, your reason for selling it?

A. So I could put all of my time to the Reno hotel here in Reno.

Q. Do you recall about when you did sell it?

A. I sold the hotel just a few days after my contract was signed but the deal was not closed until the first day of January, 1946, due to the fact that the owner of the building was in Honolulu and the papers had to be redrafted over there by their attorneys.

Q. Did you sell at a sacrifice or not?

A. I would consider that I did.

Q. Do you recall discussing with Mrs. Mapes at any time the question of a loan for and on her behalf?

A. Yes.

Q. And do you remember when the discussion took place?

A. We had talked of the loan in September of 1945.

Q. Was that before or after the contract was signed, if you remember?

A. Just before it was signed, some two or three days before.

(Testimony of P. G. Denson.)

Q. And where did the conversation take place?

A. In Mrs. Mapes' residence.

Q. Do you remember what you said and what she said?

A. Well——

Mr. Cooke: (Interrupting) The question is, do you remember?

A. Yes, I remember the thing.

Q. Well, state as nearly as you recall what was said by both of you.

Mr. Cooke: The defendant objects on the ground it is incompetent, immaterial and irrelevant to any issue in the case, that it has to do with the conversation in the nature of negotiations prior to the making of the alleged contract that is in issue in this case; that all those negotiations are conclusively merged in that contract and evidence thereof is not relevant. We object on the further ground that it can not constitute any part performance because at the time it was had there was nothing to perform, there wasn't any agreement existing, that part performance can only refer to things that occur in the making of an agreement to which it is supposed to be performance or part performance. We object to it on the further ground that it is irrelevant and immaterial as to whether he secured a loan or not. There is no claim made anywhere in the case that that was pursuant to any contract or agreement or even request of Mrs. Mapes. I think I would like to have added also the objections I have heretofore made which might, for convenience, be termed a

(Testimony of P. G. Denson.)

general objection as to the admissibility of this evidence and as stated to Exhibits D, F, and G, if I remember rightly. I think that will suffice for the purpose of this objection as to the former objections.

The Court: The former objections will be deemed applicable to this offer and that form of objections, with the present ones, will be overruled. I understand this conversation was when?

Mr. Platt: On September 21, 1945.

The Court: Objection will be overruled.

Q. I think the last question I asked you, Mr. Denson, was to state what was said, as nearly as you recall. [267]

A. Mrs. Mapes and I had discussed my interviewing Mr. Al Gock.

Q. Who is Al Gock?

A. President of the Bank of America. He succeeded Mr. Giannini of the Bank of America, the chairman of the board, and Mrs. Mapes—we had talked of the contract; in fact, I informed her that I wouldn't interview Mr. Gock or try to see anything about a loan unless I had a contract, something to show him I was going to be one of the operators and one of the owners of the lease and the contract was mailed to me at Los Angeles because I returned there——

Mr. Cooke: (interrupting) That is not stating what was said.

The Court: That part may go out.

Q. Then what else was said by you or Mrs. Mapes during that interview?

(Testimony of P. G. Denson.)

A. Mrs. Mapes was rather anxious for me to discuss the whole——

Mr. Cooke: (interrupting) Move that be stricken as not responsive to the question.

The Court: It may go out.

Q. Will you state as nearly as you recall what was said?

A. Mrs. Mapes asked me to call on Mr. Gock to see in regard to the loan for the building.

Q. Did you later do that?

A. I did.

Q. Did you report what you did to Mrs. Mapes?

A. After I interviewed Mr. Gock, Mr. Moorehead and I called on Mr. Dwight Park, who is president of the Occidental Life Insurance Company at 8th and Spring, and that was either the 27th or 28th of September, about one of those days.

Q. Did you report the visit to Mr. Gock and the insurance company to Mrs. Mapes later?

A. We did.

Q. In what manner did you report it to Mrs. Mapes and about when?

A. I went—after I left the Occidental Life Insurance Company, if I remember correctly, Mr. Moorehead and I had lunch and returned to the Biltmore Hotel and I phoned Mrs. Mapes and as I remember Mr. Moorehead also talked to Mrs. Mapes on the phone.

Q. What did you tell Mrs. Mapes on the phone?

A. I told Mrs. Mapes I felt sure we would get

(Testimony of P. G. Denson.)

the loan; Mr. Park was very favorable of it and in fact assured me the loan would be made for the amount asked for.

Q. Do you recall what Mrs. Mapes said to you over the phone in reply?

A. Well, she felt I would be successful in getting it through Mr. Gock.

Q. In the letter of December 3rd from Charles to you, introduced in evidence here, there is mention of the fact to the [269] effect that his mother would send you the newspaper articles. Did she later send them? A. Yes, I received them.

Q. Have you them now? A. I have.

Q. I wish you would produce them. One is an article in December 3, 1945, issue of the Reno Evening Gazette and the other is an article of December 2, 1945, issue of the Nevada State Journal. We offer them in evidence.

Mr. Cooke: The defendants object to the admission in evidence of the article referred to in the Reno Evening Gazette, appearing under date line of December 3, 1945, on the ground that the matter is irrelevant and immaterial on evidence of any new or different contract than the document of September 24, 1945; that there is nothing in the article as published that constitutes the basis of any part-performance agreement or arrangement; that it merely purports to be a picture of the hotel as proposed, the article attached to it or following it, explanatory of it, states something about the Reno workmen commencing the work and that the hotel



(Testimony of P. G. Denson.)

will be furnished by the firm of Charles W. Mapes, Jr., and Peter G. Denson, who have been active in the hotel business for nearly thirty years, and so on. My principal objection to it is that it is encumbering the record with material of irrelevant matter. That applies to the article in the Nevada State Journal of [270] December 2, 1945, which is principally the same type of article and the print is just substantially the same as this in the evening paper, the evening edition. I wish to add to the objection already stated the general objection that a court cannot decree specific performance upon fragmentary, irrelevant, collateral matter of this sort, that it is simply one of the things that occur, there is nothing in it that is important, nothing in it to constitute basis of part performance in the face of the statute, and if that is true, then we are relegated to the Exhibit C, which is the contract of September 24, 1945.

The Court: The reason for overruling the objection and reason for permitting this evidence and other evidence of the same nature is that it might, from what it contains, go to support the theory of waiver of the time performance of the contract. That is my idea in permitting admission of this testimony.

Mr. Platt: I might add, if your Honor will permit the interruption, that another reason for our introducing it is that it is tacit recognition by the parties of the first part of the continued existence

(Testimony of P. G. Denson.)

of the contract on the date and days of the publication.

The Court: That is probably a better way of stating the same thought I had in mind. [271]

Mr. Platt: No, I think not, but it is the same idea.

The Court: Well, the objection will be overruled. It will be admitted in evidence, the two articles, both admitted in evidence as Exhibit I.

Mr. Platt: I would like to read the articles into the record, your Honor.

The Court: You may do so.

Mr. Platt: (Reads article from Reno Evening Gazette (Exhibit I).) This article is very much the same, your Honor, but if your Honor will indulge me, I would like to have it in the record.

The Court: Yes, just go right ahead.

Mr. Platt: (Reads article from Nevada State Journal Exhibit I.)

Q. I hand you, Mr. Denson, what purports to be publications, one Keeler's Review, dated March, 1946, the other Western Hotel & Restaurant Reporter, March, 1946, and the third Western Hotel Reporter dated December, 1945. State whether there are any articles in any or all of those publications published with the joint knowledge and request of you and Mrs. Mapes or you and Charles Mapes and Mrs. Mapes? A. They were.

Q. And when was that request made, as nearly as you recall?

A. Well, we had talked of that right along, about

(Testimony of P. G. Denson.)

giving some publicity to the hotel as soon as we possibly could, but [272] we didn't want to give out any news, at least they didn't—that was the excuse—until the actual time to go ahead with it and it first came out in the December issue of 1945 with a picture and write-up similar to the one you just read, which is in the December issue, page 4. I submit that one. These other two hotel magazines is one page 6 of the March issue, the write-up of the hotel in regard that we were seeking a name for the hotel, which we had talked of considerably in regard to a name most proper and a short name that we had suggested a cash prize and wanted to have a little contest here in Reno, there was the discussion of it in regard to the name, to have a contest and pick the name, and spoke of giving a cash prize.

Q. You mean you discussed all that with Mrs. Mapes?

A. With Mrs. Mapes and Charles and on page 6 of this Western Hotel Reporter of this March issue is in regard to the name. In the Keeler's Hotel & Restaurant Review, on page 47, there was also the cut and picture run in this magazine and also topped off with wanting a name for the hotel. That is the March issue 1946 and page 47.

Q. Do you know whether Mrs. Mapes or Charles or both of them had any knowledge of these pictures?

A. Oh yes.

Q. How did they get that knowledge?

A. Well, they knew that I was waiting for this

(Testimony of P. G. Denson.)

information [273] in regard to the hotel in order to have it published. The first picture in the Keeler Hotel Review, if I am not mistaken, I think Mr. Moorehead furnished the cut of the picture for that. That is my understanding, but I could be mistaken on it.

Q. Do you know who furnished the cuts for—

A. (Interrupting): I had some cuts made myself but I think Mr. S. D. Parrish received the first cut from Mr. Moorehead. I won't be positive but I think that is it.

Mr. Platt: We offer these in evidence for the same reason that we offered the Journal and Gazette copies.

Mr. Cooke: The defendants object to the admission in evidence of the three magazines with the articles indicated by the witness, one occurring on page 47 of Volume 69 of the Keeper Pacific Hotel Review magazine, and another article appearing on page 4 of the December issue of Western Hotel and Western Reporter, and the other one appearing on page 6 of the March, 1946, issue of the Western Hotel & Restaurant Reporter. The objection is upon the ground that this is an action for specific performance, based upon the execution of an agreement, or alleged agreement, dated September 24, 1945, and which the plaintiff alleges in his complaint is complete and certain and definite in all its parts, that—

Mr. Platt: (Interrupting): I think I ought to correct counsel there, if your Honor will permit.

(Testimony of P. G. Denson.)

The allegation [274] is that the contract is definite and certain in all its material and essential parts.

Mr. Cooke: Counsel may be right; but I do not think that that makes any difference, to make the interruption.

Mr. Platt: Well, I beg your pardon for interrupting.

Mr. Cooke: The documents offered in evidence are stated to be for one purpose at least, of showing a waiver of the conditions of the written agreement. No waiver is pleaded in the complaint, no legal plea of any waiver and which requires——

Mr. Platt (interrupting): I am afraid, if your Honor please, I am almost forced to interrupt counsel now because waiver and estoppel is specifically pleaded in the complaint.

Mr. Cooke: Well, I say they are not, with all deference to my friend over here.

The Court: Just make the objection the way you would like to have it, Mr. Cooke.

Mr. Cooke: Well, I am interrupted and have to meet the objection. You can't plead by saying some one estopped and waived something. There is no waiver pleaded, therefore, it can't be admissible in evidence by way of proving waiver. In order to be a waiver, there has to be a consideration for changing of the agreement and there is no consideration shown here for any change of agreement in any respect, nor is there [275] any plea of any consideration. The written agreement, to add possibly to



(Testimony of P. G. Denson.)

the grounds of the objection—the objection is on the further ground that the written agreement cannot be changed or supplemented by fragmentary and loose, disconnected, desultory articles, such as this, that are published in the paper. They are published in the paper by Mr. Denson. It is true that he has testified that the other parties knew of the publication, but unless they authorized the publication, I don't think that the mere knowledge that they had that he was publishing these articles would constitute any estoppel or waiver. The point is that material of this sort, if allowed to go into evidence to show a waiver or show a change of conditions of a contract, would be subject to the objection that it would be making a new contract. If your Honor will allow this in and then learns that the contract was changed, then you have a contract parole in writing and by law parole evidence to explain something, we submit, cannot be done under the statute, which requires these contracts with reference to real property to be in writing and signed. The objection also is to this material here which appears to be on its face nothing but some voluntary statements made by Mr. Denson to the newspaper people, in which his name is set forth about his business and society and so on. How that can possibly constitute any waiver or estoppel as to the Mapes is certainly not clear to me. There is no duty rested upon them to be chasing him around and see that he did not publish something about them they did not want. He could publish anything he wanted about the



(Testimony of P. G. Denson.)

building, claim he was sole manager, but the mere fact they knew he published these things does not make it their articles. It isn't them speaking, it is Mr. Denson speaking. So we stand on the objection and also the general objection heretofore made, that it is an attempt to alter by parole evidence the conditions of a written document.

The Court: I think there is evidence here from Mr. Denson to the effect that these articles were published with the full knowledge before publication of Mrs. Mapes and Mr. Charles Mapes. The objection will be overruled and the exhibits may be admitted in evidence as Exhibit J.

Q. Mr. Denson, do you know of your own knowledge how Mrs. Mapes and Charles got the information about your career, let me say, that was published in all of these publications? A. Yes.

Q. How did they get it?

A. In regard to myself, my own background, I sent that to them.

Q. Sent that to whom?

A. I think Mrs. Mapes or Charles. I can't just remember which it was.

Q. How did you happen to send it? [277]

A. They wanted it for the paper over here and we had discussed the issues in the magazines for some time, but it was against their wishes that any news should get out in regard to it until the actual starting of construction. That is why we didn't get more publicity than that.

(Testimony of P. G. Denson.)

Q. Now any time since the signing of the agreement in evidence and in controversy here by all the parties to it, has Mrs. Mapes or her attorney or anybody for or on her behalf ever tendered to you a form of lease embodying the essential terms of the contract?      A. Absolutely not.

Mr. Cooke: We object on the grounds there is no obligation for the tender of a lease, nor any obligation on Mr. Denson to tender a lease to us.

The Court: Objection overruled. Answer the question.

A. Absolutely not. Not even mentioned the lease to me after that, never submitted me anything.

Mr. Cooke: The question is answered. I move to strike out the other.

Mr. Platt: I think the answer amplified and I think it is proper.

The Court: The latter part may go out. He stated it was never tendered.

Q. Did Mrs. Mapes or Charles or their attorney or anybody for or on their behalf ever seek an interview or a conference [278] with you to draw up a lease?      A. Absolutely not.

Q. Have you always been ready and willing to enter into a lease with them in accordance with the terms, conditions and covenants of the agreement?

Mr. Cooke: Objected to as leading.

A. I have.

Mr. Cooke: I move to strike the answer. I would like to state my objection.

(Testimony of P. G. Denson.)

The Court: The answer may go out and state your objection.

Mr. Cooke: I object to it as leading. I do not think this witness needs any leading from anybody.

The Court: Objection overruled. Answer the question.

(Question read.)

A. I have.

Q. And are you now ready and willing?

A. I am.

Mr. Cooke: Same objection.

The Court: The answer may be stricken and and make your objection.

Mr. Cooke: Same objection, your Honor.

The Court: Same ruling. Overruled.

A. I am.

Q. Ever since the signing of the agreement in evidence here [279] have you been able to perform all the conditions, terms and covenants of it?

A. Absolutely I have.

Q. And from the time of the signing of the agreement up to the present time and at the present time, are you able to perform? A. I am.

Mr. Platt: If your Honor please, I may want to recall this witness on direct examination for further questions.

The Court: If you desire you may later on.

Mr. Platt: But for the present the defense may cross-examine.

(Short recess.)

(Testimony of P. G. Denson.)

Mr. Denson resumed the witness stand.

Mr. Platt: Your Honor please, there are a few more questions occurred to me on direct examination.

The Court: All right, go ahead.

Q. Mr. Denson, did you see either Mrs. Mapes or Charles or Mr. Cooke in Reno, Nevada, early in April, 1946?      A. I saw——

Q. (Interrupting): Just answer the question.

A. Yes, I did.

Q. When and where did you see them?

A. I saw Mrs. Mapes and Charles at Mrs. Mapes' residence on the morning of April 10th of this year, 1946. [280]

Q. Did you have a conversation with them?

A. I did.

Q. And state as clearly as you recall what the conversation was.

A. I came to Reno to see Mrs. Mapes and Charles. This was after my meeting of April 1st in San Francisco, at the request of Charles. I arrived here on April 9th, phoned Charles, made an appointment with him for 10:00 o'clock the next morning at Mrs. Mapes' residence. I arrived there at ten, Charles was there, his uncle was there, Mr. Hart, Mrs. Mapes was probably some 45 minutes late in getting there. She was not home. We waited for her to arrive. After she arrived I informed her, told her what Charles had told me in San Francisco in regard——

(Testimony of P. G. Denson.)

Q. (Interrupting): What did you tell her?

A. I told her Charles had met with me in San Francisco and informed me that we were not going to have the sky room, they had big offers for it. This Mrs. Mapes immediately denied and asked Charles, "Why did you tell him that?" and Charles denied all the conversation he had with me in San Francisco in regard to the sky room. I insisted on telling Mrs. Mapes what had taken place in San Francisco and I turned to Charles and asked him just why I was over here, what he wanted to do. He said, "Mr. Denson, I am not going through with the deal." I informed Charles he was making a mistake and if he didn't want to go through with it, I would carry out the deal myself [281] as I first planned. He said, "That is up to you and mother." I turned to Mrs. Mapes. I said, "You have heard what Charles has to say about it. What do you want to do?" Mrs. Mapes remarked, "Mr. Denson, you and Charles had better go down and see Mr. Cooke and get it straightened out." I mentioned to Charles it was only quarter after eleven, we could probably see Mr. Cooke before he went to lunch. He said all right. I am not positive there was a highball served before we left for Mr. Cooke's office. Charles and his uncle and I got in his car and we started for Mr. Cooke's office. We got near the El Cortez Hotel and Charles said he wanted to go in and phone. He came back and informed me Mr. Cooke couldn't see us until three o'clock. He agreed to come back and drive me down to Mr.

(Testimony of P. G. Denson.)

Cooke's office. We arrived there about three o'clock. I informed Mr. Cooke what had taken place and what Charles had said and Charles had refused to go through with the deal, so I was here ready and willing and our contract called for \$20,000 deposit and I had paid my ten thousand, I was ready to give another check for another ten. It was on a Los Angeles bank but I would have the local bank OK the check. Mr. Cooke informed me Mrs. Mapes wouldn't let me have the lease alone. I informed Mr. Cooke, all right, if she had some other hotel man suitable to me I would agree. Mr. Cooke said, "Mr. Denson, Mrs. Mapes made it very plain she wouldn't let you have an interest at all." I informed Mr. Cooke he couldn't [282] represent Mrs. Mapes' interests and mine too, so therefore I would have to get an attorney. Mr. Cooke asked me if it would be a Reno attorney. I informed him my attorney was Harry Young of San Francisco but I would leave that to Mr. Young in regard to getting counsel in Reno locally. Mr. Cooke asked me if I would have Mr. Young communicate with him in regard to it. This I did, but Mr. Young did not write to Mr. Cooke direct. First he wrote to Mrs. Mapes, but I had delivered Mr. Cooke's request and I have, I think, a copy of Mr. Cooke's letter back to Mr. Young in regard to the deal. So I went back by stage that evening to Sacramento, picked up my car there the next morning and drove from there, phoned Mr. Moorehead from around about Richmond, made an appointment with him for lunch,



(Testimony of P. G. Denson.)

said I might be a little late but wanted to see him. I informed him what had taken place.

Q. As I understand your testimony, Mr. Denson, on yesterday you testified that you and Mr. Moorehead and the Mapes conferred at different times with respect to the plans of the hotel and likewise the plans for furnishing and equipping it?

A. That is true.

Q. Now did those conferences continue or were they stopped?

A. When I first knew I would be refused plans was before I came to Reno on the 9th.

Q. 9th of April you mean? [283]

A. 9th of April of this year. Mr. Moorehead, I feel sure, in fact he told me, also Charles told me, that Mr. Moorehead was coming to Reno with him the next day, on the 2nd. I came up here to San Francisco by plane and went back by plane on the 2nd and the 4th or 5th I returned to San Francisco, then went to Mr. Moorehead's office and that is when Mr. Moorehead informed me that Charles had instructed him not to give me any more plans. That was before I came over here on the 9th. He said he hoped I wouldn't ask him for a set of plans, but I have asked him for a set of plans since then.

Q. But you have never seen them?

A. But I was refused the detailed drawings.

Mr. Platt: I think that is all for the present.

The Court: You may cross-examine.

(Testimony of P. G. Denson.)

Cross-Examination

By Mr. Furrh:

Q. Mr. Denson, you have testified that your first contact with Mrs. Mapes was in 1940, is that correct?

A. That is correct.

Q. Was it on that occasion that you suggested to her the proposition of erecting a hotel on this particular lot where the hotel is now being constructed?

A. I didn't suggest that she build a hotel.

Q. What was——

A. (Interrupting) I had been informed she wanted to build a [284] hotel and was interviewing her in regard to it.

Q. Did she tell you on that occasion that that site had been acquired by her deceased husband for the purpose of erecting a hotel?

A. That I don't remember, whether she told me that or not. I made that suggestion to Mrs. Mapes last year that we would——

Q. (Interrupting) I am talking about the conversation you had with her in 1940.

A. I don't remember any such conversation that her husband had acquired the property to build a hotel. Mrs. Mapes informed me they acquired the property to know what was going to be built there to protect the other properties across the street or near there somewhere.

Q. Didn't you suggest to her that she lease the hotel if one were constructed?

(Testimony of P. G. Denson.)

A. Not exactly to me. Rather between Mr. Leon Huckins and myself.

Q. What date are you talking about?

A. I am talking about 1940 that you just spoke of.

Q. Isn't it true that *Mr.* Mapes told you that it was her plan to erect a hotel which was to be leased exclusively to her son, Charles W. Mapes, Jr.?

A. Never heard of her son being interested in a hotel until 1944, until Mr. Moorehead informed me Mrs. Mapes would probably like to have Charles interested in the hotel. That goes [285] back six years, you know.

Q. That is 1940? A. Yes, 1940.

Q. When was the first time that anything was said about Charles being interested in the operation?

A. I wouldn't say just what month it was in 1944, but I do know it was before September of 1944. It might have been May or June. Mr. Moorehead could give you that information.

Q. Mr. Denson, isn't it true that when that subject was first discussed with Mrs. Mapes that she told you that it was her plan to erect this hotel for her son?

A. Are you talking about——

Q. 1944. A. 1944?

Q. Yes.

A. She did not. Mrs. Mapes had talked to me in 1940 in regard to Charles, he was going to study law.

Mr. Furrh: I move that be stricken as not responsive to the question.

The Court: He can explain his answer.

(Testimony of P. G. Denson.)

Mr. Platt: What did you say, so the reporter will get it?

A. I was always under the impression that Charles was going to study law. I didn't know he was interested in the hotel business and I had been informed that by Mrs. Mapes, that that [286] was what Charles would probably take up, was law. The first I knew he wanted to be interested in the hotel business was when Mr. Moorehead spoke to me in 1944 and I know it was before September because if I remember right September, 1944, is the first time I met Charles.

Mr. Cooke: I move to strike that as not an explanation.

The Court: Motion denied.

Q. Mr. Denson, on what occasion was the proposed association between you and Charles Mapes, Jr., first discussed?

A. I didn't quite get your question.

Q. I say on what particular occasion was the proposed association between you and Charles Mapes, Jr., first discussed?

A. You mean between Charles and myself?

Q. Yes.

A. We talked of it in September and then——

Mr. Platt: What year?

A. 1944.

Q. Prior to the time that you talked to Charles in 1944, had you and Mrs. Mapes not discussed the possibility of you and Charles being associated in the operation of the hotel?

(Testimony of P. G. Denson.)

A. Well, just before I met Charles I was over here in September, Mrs. Mapes and I discussed Charles then and I waited at her home to meet Charles. He came in by plane that evening. And if I remember correctly, that was the first time I met [287] Charles.

Q. Was there any discussion had as to the basis upon which you and Charles would operate the hotel?

A. No, there was not. It was understood in general that I was to be manager of the operation for a specified time.

Mr. Furrh: Your Honor, I move the answer be stricken as not responsive to the question.

(Question and answer read.)

The Court: Motion denied:

Q. Mr. Denson, when was the first time any discussion was had between you and Charles as to a percentage basis for the working out of your association in connection with the operation of the hotel?

A. Well, Charles and I when we discussed the deal, in regard to about he and I, when he first informed me\*that he wanted to be 50-50 on this deal with me, they already knew the percentage of what we working on. Mr. Moorehead had presented that to them because I had taken that up with Mr. Moorehead and I feel certain it was first presented to them by him. I could be wrong about that, but that is my best recollection.

(Testimony of P. G. Denson.)

Q. Was there ever discussion between you and Charles or between you and Mrs. Mapes as to a percentage basis of 30 per cent of the net earnings to you and 70 per cent of the net earnings to Charles?

A. No, I wouldn't have been interested in it.

(Question read.)

A. Absolutely not.

Mr. Cooke: I move to strike out the other part of the answer, he wouldn't be interested in it.

The Court: It may go out.

Q. Mr. Denson, you have testified as a result of your discussions with Mrs. Mapes and Charles it was generally understood that you were to manage and operate the hotel, is that correct?

A. Yes, that is true.

Q. Now just when was a discussion had as to who would actually manage and operate the hotel?

A. Well, there was—I had discussion——

Q. (Interrupting) Just answer the question.

A. Charles and I—I would say it was around in September—in August, when we all met there, either I would say the 16th or 17th, Charles and I discussed, as I mentioned before, in regards to the deal and I informed Charles that I would like to be the managing operator for a certain specified time, until he had more experience.

Q. Was that discussion only between you and Charles? A. Just between Charles and I.

Q. And that was in August of 1944?

A. 1945.



(Testimony of P. G. Denson.)

Q. And where did that conversation take place?

A. The mezzanine of the Sir Francis Drake Hotel in San Francisco.

Q. Was any other discussion ever had in which the question was taken up as to your managing and operating the hotel?

A. No, I can't say there was because in fact, when Charles and I had this meeting, Charles said he expected that. I told him I wasn't looking for any publicity for myself and I wouldn't ask for it to be on the hotel letterheads or our stationery.

Q. Mr. Denson, isn't it correct that for some time prior to the date that this agreement of September 24, 1945, was signed, that you were very insistently urging Mrs. Mapes to sign some type of memorandum regarding the proposed lease, in order that you would have a writing to show?

A. I wasn't asking in the way of memorandum. I was asking for a contract for Charles and myself and Charles phoned me after the meeting in Sacramento and said, "Let's go over and get our contract signed up with mother." That I did. That was in September of 1945, Friday I think it was, the 21st. Those dates can be checked though.

Q. Didn't you tell Mrs. Mapes on several occasions that you were very anxious to have a written instrument of some kind that you might show to individuals whom you wanted to know that you were interested in this particular hotel?

A. Why no. [290]

Q. Isn't it true, Mr. Denson, that at the time

(Testimony of P. G. Denson.)

you were in Mr. Cooke's office on the occasion on which this instrument of September 24, 1945 was signed, that you stated at that time you were very anxious to have some kind of an instrument in order that you might show it?

A. I wasn't in Mr. Cooke's office on September 24, 1945.

Q. What was the date you signed the contract?

A. It was October 4th.

Q. Well, let me ask you this, Mr. Denson: Isn't it true that on October 4, 1945, at the time you were in Mr. Cooke's office you stated that you were anxious to have some kind of a written instrument which you could show?

A. No, no, because the contract had been signed by Mrs. Mapes. We met there to sign the contract, all of us.

Q. Didn't you make that statement while the instrument was being prepared?

A. Why certainly not. The contract had already been signed by Mrs. Mapes. I went there for everybody to sign it, Charles and myself and Mrs. Mapes. and also initial the corrections I had inserted in regard to the income about the entire building.

Q. Mr. Denson, when did you first become acquainted with Mr. Cooke?

A. I first met Mr. Cooke at Mrs. Mapes home, I would say September 23, 1945. I had never met him before to my knowledge. [291]

Q. Do you remember what day that was on?

(Testimony of P. G. Denson.)

A. That was on Sunday afternoon, approximately four o'clock in the afternoon.

Q. How did it happen that you met Mr. Cooke on that day?

A. Mrs. Mapes knew that Charles and I were coming to Reno in order to have the contract signed up. We talked a lot and I had brought over and prepared a document which was very much the same as Mr. Cooke had prepared. We talked Friday evening and Mrs. Mapes said, "We will get together tomorrow morning." She and Charles and I tried to get together on Saturday morning, but I was put off and put off. We talked about it. Mrs. Mapes had asked me—I was their house guest—she had asked me to stay over and meet some of her friends on that Saturday evening. I finally agreed to do it but I felt I should be back to my business. Mrs. Mapes and I took a ride and talked over everything in general about the hotel that Saturday morning. That Saturday afternoon Gloria, Charles, and Charles' girl friend, I forget her name, the four of us went to the football game. That evening Mrs. Mapes entertained us at her home and we all went out to dinner together. Then on Sunday morning we tried to get together several different times. Finally Charles told his mother, "Well, mother, Mr. Denson is right, we should get the contract ready between us." I had mentioned to Mrs. Mapes that we couldn't go ahead unless we had a contract between us, also Mrs. Mapes was anxious for me, [292] as I stated before to try and endeavor to secure a loan through Mr.

(Testimony of P. G. Denson.)

Al Gock's office, the Occidental Life Insurance Company, through it, and I refused to take it up with Mr. Gock until I had my contract. Let me state where they first knew about Mr. Gock.

Mr. Furrh: Just a minute. I ask that that portion of the answer be stricken as not responsive to the question. I would like to have the reporter read the question.

(Question and answer read.)

A. Either Mrs. Mapes phoned or Charles, but I think Mrs. Mapes phoned to Mr. Cooke to please come down to the house, which he did and he was there, I presume—anyway, he was asked to stay for dinner, but he didn't.

Q. Did you have a discussion while Mr. Cooke was there?      A. We certainly did.

Q. Who all was present?

A. I feel positive Charles was also there but they say he wasn't but Mrs. Mapes and I were there, but Charles was fully familiar with regard to what Mr. Cooke was coming for. I will state, if you like, why they sent for him.

Q. I would like to have you tell us first what took place at this conversation on that particular Sunday afternoon when you and Mr. Cooke and Mrs. Mapes were present, and I believe you said you thought Charles.

A. I feel positive Charles was present. [293]

Q. Just tell us the nature of the discussion and what actually took place at that time.

A. It was all in regard to the agreement that

(Testimony of P. G. Denson.)

I had had there for Mrs. Mapes to sign. She objected very much to the article that was in there in regard to guaranteeing the taxes, the insurance, the upkeep, the interest on borrowed money and also to amortize the loan over a period of years. Mrs. Mapes informed me—that was income from the entire building—she said, “You mean the stores too?” I said, “Mrs. Mapes, everything.” She said, “We will leave that out, just leave that out; that has nothing to do with it at all. Let’s keep straight to the strict percentage deal.” I informed Mrs. Mapes I didn’t want her to feel I was trying to take advantage of her one way or the other and Charles spoke up and said, “Mr. Denson, I don’t think mother quite understands” and I explained to her why that was for her protection, and not only that, it made it look favorable to the insurance company or whoever was making the loan, that that was to be taken care of and a chattel mortgage on the furniture, that the lease was secured by the chattel mortgage on the furniture and if you didn’t live up to the agreement, naturally you would lose this furniture. Well, she sent for Mr. Cooke and when Mr. Cooke arrived I explained to Mr. Cooke what Mrs. Mapes’ objection was and he wanted to redraft it. I said, “You can redraft it, yes, but I am going back tonight. If you want to redraft and send it down to me [294] or mail it special to Los Angeles and I won’t sign up Mrs. Mapes before I go. She doesn’t want that article in there so leave it out.” Well, I received the document—



(Testimony of P. G. Denson.)

Q. (Interrupting) Is this conversation you are relating that took place Sunday afternoon?

A. All Sunday afternoon, the 23rd of September, 1945, in Mrs. Mapes' home.

Q. Is that everything that took place on that occasion as you recall?

A. Mr. Cooke agreed to redraft it the next day and mail it to me and they assured me it would be mailed and Mr. Cooke was invited to stay for dinner but I feel certain that he didn't stay.

Q. Did you, during the course of that conversation, produce this proposed contract?

A. Oh yes, I had that.

Q. It was used as a basis for discussion in this matter?

A. It was because the terms of the lease and the contract was stipulated in there, specifically stated everything, the life and also the percentage, 20-year lease and percentage of each department that we were to have in our contract, which consisted of the hotel part, the coffee shop and dining room, cocktail lounge, mezzanine floor and for the rooms and also for the sky room, each one specifically stated in that document. [295]

Q. Mr. Denson, did you have any other discussion after that with Mr. Cooke concerning this proposed contract?

A. The contract was prepared by Mr. Cooke, at least it was on his letterhead or forms, heading with his name, anyway it was his document and witnessed by him. They mailed it to me at Los



(Testimony of P. G. Denson.)

Angeles and then later I phoned Mr. Moorehead and met Mr. Moorehead and we endeavored to carry out what I was supposed to be there for, the business I was there for. Then I returned to Reno on the 3rd of October and saw Mr. Cooke in his office on the 4th of October, when I made the deposit and signed the agreement. The agreement sent down to me was only signed by Mrs. Mapes and witnessed by Mr. Cooke and I think his secretary. It speaks for itself.

Q. Did you have any discussions the following September 23rd—I am referring to the Sunday at which you were present in Mrs. Mapes' home, with Mr. Cooke, Mrs. Mapes and Charles? Did you have any discussions the following day?

A. I wasn't there the following day. I wasn't there on the 24th. I drove back to Sacramento that night, left Sacramento early next morning, went into Visalia, went into Los Angeles on the 24th and received it on the 25th.

Q. Mr. Denson, you have testified that on September 23rd, which was a Sunday, that you were at Mrs. Mapes' home, that you brought an agreement with you which was used as a basis for discussion, is that correct? [296]

A. Yes, I gave a copy of it to Mr. Cooke.

Q. I will show you this document and with the exception of the pencil notations and the sheets which are clipped, will ask you if that is the document which you have referred to?

A. That is it.

(Testimony of P. G. Denson.)

Q. That is the document?

A. I feel positive it is.

Q. You notice the document contains numerous pencilled notations thereon.

A. Oh yes, but I didn't do that.

Q. Do you know who made those?

A. I couldn't tell you.

Q. You weren't present when those were made?

A. No.

Q. Mr. Denson, isn't it a fact that on the Monday following the conversation which you just related as having taken place at Mrs. Mapes' home, when Mr. Cooke, Mrs. Mapes and Charles were present, that you and Mrs. Mapes came to Mr. Cooke's office; at that time you produced this document and stated that it was a form which was commonly used by hotel men in this type of transaction?

A. Are you mentioning the 24th?

Q. Yes.

A. I wasn't here the 24th. I wasn't in Reno. I can't have been in his office because I left on a Sunday around six or seven o'clock the 23rd. [297]

Q. Did you and Mrs. Mapes ever discuss this document with Mr. Cooke in his office?

A. No, absolutely not.

Q. Mr. Denson, you note that this instrument contains numerous blanks. Were any of these blanks filled in at Mrs. Mapes' home at the time you had the discussion with Mr. Cooke?

A. I do not remember of any blanks being filled in. We discussed what the document was and the

(Testimony of P. G. Denson.)

amount, which was in regard to what I stated before, in regard to the income that would be sufficient to take care of those other things from the entire building. Mr. Cooke might have made some notation. It was discussed in general but the terms of this document were to remain the same, with the exception of that, and I thought that would be the way, but when he sent it to me he had still put that in.

Q. Then it is your testimony that none of these changes which later appeared in the instrument which was signed were made in your presence?

A. You mean these pencil notations?

Q. No, I mean the changes between this document which you identified as being the one that you adduced at the time of your conference with Mr. Cooke and Mrs. Mapes and the document as it was signed?

A. This document I have here, those are the terms and the terms and life of the lease is mentioned there. I did not see [298] this document that you have there from Mr. Cooke any more than just now as you showed me. The one that was signed by everybody was prepared by Mr. Cooke. In fact, there was practically no discussion. We all met and read them over and signed them. The terms of the contract were the same.

Q. In other words, the terms of both the instrument which you stated you adduced and the terms of the contract as signed were substantially the same, is that correct?

(Testimony of P. G. Denson.)

A. Yes, so far as the percentage of the lease and the terms of it for 20 years, and the percentage.

Q. By percentage you mean——

A. I presume it is, but anyway the one that was signed was what we all had in mind and had agreed upon the terms of the document that we used.

Q. Mr. Denson, where did you procure this document which I have just exhibited?

A. I had pencilled out what I had in mind and this was typed in Harry Young's office in San Francisco. I had given the data and prepared the title of it to be copied and Harry Young copied it in his office on that form.

Q. Harry Young——

A. (Interrupting) Is an attorney.

Q. Has he represented you?

A. He has represented me for 26 years. It is the firm of Young, Huchins & Rabinna. It is in the Western Life Building [299] on the corner of Market and Second, on the southwest corner of the building.

Mr. Furrh: Your Honor, I would like to offer in evidence this agreement which is undated and which Mr. Denson has identified as being the proposed contract which was produced at the home of Mrs. Mapes on September 23, 1945.

Mr. Platt: If the Court please, I haven't any objection to it being admitted in evidence, the original document that Mr. Denson submitted to Mr. Cooke, but this document which they produce in the first place has a rider on it in pencil, another

(Testimony of P. G. Denson.)

rider here and another one next to it, two more riders on the last page, and it is full of lead pencil interlineations and until those things are identified, I will have to object.

The Court: Do you offer these riders?

Mr. Furrh: I was offering the document to show the proposed contract which was submitted by Mr. Denson and I asked him——

The Court: (Interrupting) Do you contend those riders were submitted by Mr. Denson?

Mr. Furrh: No sir, he testified the instrument in type was the document he submitted.

The Court: Maybe you had better offer the contract without the riders. Objection will be sustained. [300]

Mr. Cooke: Let it stand for identification.

The Court: Exhibit 1.

Mr. Platt: I understand it is offered for identification?

Mr. Cooke: It is marked for identification.

The Court: Is the offer withdrawn?

Mr. Cooke: Your Honor ruled on it, you sustained the objection.

The Court: In the present form it is sustained, with those riders; otherwise, if excluded, it may be admitted. The record may so show.

Mr. Platt: Otherwise we wouldn't object, your Honor.

Mr. Cooke: It may so show.

The Court: Unless those riders were shown to have been submitted with this printed document

(Testimony of P. G. Denson.)  
by Mr. Denson. We will be in recess in this case  
until tomorrow morning at 10:00 o'clock.

(Recess taken at 4:00 p.m.) [301]

Wednesday, October 30, 1946, 10:00 A. M.

Attorneys present as at previous session.

MR. DENSON

resumed the witness stand on further cross-examination by Mr. Furrh.

Q. Mr. Denson, you testified that on one occasion, while you were in a conference with Mr. Cooke, that you told him to prepare the lease and you would sign it, is that correct?

A. That is correct, yes.

Q. Where did that conversation take place?

A. In Mr. Cooke's office.

Q. And when did it take place?

A. On the 4th of October, 1945.

Q. And who was present on that occasion?

A. Mrs. Mapes was present, Charles was present, and his secretary might have been there. Anyway, she was in the other room.

Q. Was that in Mr. Cooke's private office?

A. In his private office, yes sir.

Q. Do you remember just what was said on that occasion?

A. If I remember correctly, I think I remarked to Mr. Cooke, "Now the next thing to do is signing the papers. When you prepare the lease, I will be



(Testimony of P. G. Denson.)

ready to sign it." The wording is something like that.

Q. You directed your remarks to Mr. Cooke?

A. To Mr. Cooke, yes.

Q. What did Mr. Cooke say?

A. I can't recall that Mr. Cooke really said anything.

Q. Was anything else said at that time about the signing of the lease?

A. Not that I remember of.

Q. Mr. Denson, you have testified that the only conversation that you had with Mr. Cooke in connection with the preparation of this agreement, which was entered into on September 24, 1945, was a conversation at the home of Mrs. Mapes on September 23rd and then in Mr. Cooke's office on October 4, 1945, is that correct?

A. That is correct, yes. I talked to Mr. Cooke on the 23rd. I am almost positive that is the date. That was a Sunday of last year, the 23rd, in the afternoon. I think it was between four and six o'clock. And the next time I was with Mr. Cooke was on October 4th in his office.

Q. The only time you were in his office was on October 4th?

A. Well, no, I was in his office, if I remember correctly, on another occasion. I believe that was also—I think that was on October 4th also.

Q. Do you remember what was the occasion of your being in his office twice on October 4th,

(Testimony of P. G. Denson.)

A. Yes, I can explain that if you want me to.

Q. Was that before the meeting?

A. On that occasion we were in there it was not in regard to our contract.

Q. It was in regard to other matters?

A. Yes. I will not mention that unless you insist on it.

Q. Just what took place on this other visit that you had with Mr. Cooke?

A. Well, I didn't have any business with Mr. Cooke. I accompanied Mrs. Mapes and Charles over there. I think Mr. Cooke knows what that was and they might not want that brought out. It was not pertaining to me at all. It was something else.

Q. Go ahead and tell us, Mr. Denson, just what took place.

A. All right, you asked for it.

Q. That was in Mr. Cooke's office?

A. That was in Mr. Cooke's office.

Q. Now what I am referring to is what happened in Mr. Cooke's office.

A. Do you want to know why we were there?

Q. What conversation you had with Mr. Cooke.

A. I didn't have any conversation with Mr. Cooke at all. Mrs. Mapes did.

Q. You didn't talk with Mr. Cooke?

A. I was there. I accompanied Mrs. Mapes and Charles. Mrs. Mapes did the talking, a little something I don't think has any bearing on this at all.

Q. Go ahead and relate to us what this conversa-

(Testimony of P. G. Denson.)

tion was between Mrs. Mapes and Mr. Cooke that you heard.

A. All right. Mrs. Mapes and Charles and I had gone to the postoffice address of her tenants that she was very desirous of getting out of there and there was quite a ruckus made over there and this man, he went hysterical, due to the fact that Mrs. Mapes had called him a Jew, and the man was very much excited and screamed and yelled and everything else and told Mrs. Mapes that Jesus Christ was a Jew and if she believed in Jesus Christ she shouldn't say anything about the Jews. Mrs. Mapes was very excited and very much upset and we proceeded over to Mr. Cooke's office for her to tell him that he would have to get him out of there. I think he had already served notice on him. That was the conversation we had in Mr. Cooke's office at that time and I don't think it has any bearing.

Q. Nothing was said at all in regard to this contract?

A. I told you that before you had me tell that.

Q. Mr. Denson, at the time you were in Mr. Cooke's office for the purpose of signing the lease, did Mr. Cooke suggest that inasmuch as it was anticipated that the terms and conditions of this lease would be worked out, there would be no need in going into this preliminary agreement at this time?

A. Mr. Cooke didn't make any such remark at all at no time in his office or in Mrs. Mapes' home

(Testimony of P. G. Denson.)

either. He did not [305] comment on it or make any suggestions in regard to that.

Q. Did you say anything at all in Mr. Cooke's office about wanting this agreement for the purpose of having it available to show?

A. Why no, I certainly did not. Pardon me just a minute—not in his office. In Mrs. Mapes' home I remarked, in regard to the taxes and insurance and the interest on borrowed money that she was supposed to borrow and also to amortize the loan over a period of twenty years, I spoke about that, that I couldn't try to intercede for a loan unless I had a contract myself, they would think I was a poor business man. Those were the correct words that were stated to Mr. Cooke in Mrs. Mapes' home. There was nothing said in Mr. Cooke's office in regard to any preliminary thing at all, nothing, because it wasn't preliminary.

Q. Mr. Denson, you have testified that among the various concerns that you contacted in reference to carrying out the contract in respect to the furniture and obtaining furnishings for the hotel, that you contacted the Dohrmann Hotel Supply Company, is that the correct name?

A. Yes.

Q. On how many occasions did you interview representatives of the Dohrmann Hotel Supply Company?

A. Dohrmann's, that's hard to say. In fact, after I received my contract in September, each and

(Testimony of P. G. Denson.)

every time I was in San Francisco I would always end up there because I was very much interested and I knew there was a lot of work to be done. I have furnished several places.

Q. You don't recall any specific dates that you were conferring with representatives of the Dohrmann Hotel Supply Company?

A. That would be hard for me to say. I couldn't say.

Q. Do you have any idea how much time you spent with representatives of Dohrmann's?

A. That would be hard for me to say. I couldn't in touch with Dohrmann's and they were sending me data all the time in regard to cost sheets. When they first worked up the cost, a rough estimate of what it would cost, that didn't suit me at all and I wanted a breakdown of it. They gave me one total cost. I said I couldn't use that, I have to have something to show Charles, so that we can get competitive bids, compare prices with other companies. They are all familiar with that. They knew what I was doing.

Q. Now, Mr. Denson, you have testified that you contacted the Dohrmann Hotel Supply Company, Barker Bros. and various other concerns with reference to the obtaining of furniture, etc., for the hotel——

A. (Interrupting) I don't think I said various other concerns. I named the ones I had contacted.

Q. That is what I had in mind.

A. Besides Dohrmann and Barker's—wait a

(Testimony of P. G. Denson.)

minute, there was one [307] I didn't mention. I went clear down to Santa Monica to the McMahon Furniture Company to see if they could submit something to me. I made it very plain what I was doing. They have a tremendous buying power because they are a very very large furniture buyer and I believe Mr. Moorehead can give you an idea——

Q. (Interrupting) All these concerns you have testified about, they were interested in making a sale, is that not correct?

A. Any one is interested in making a sale.

Q. And any one of the information or data they furnished to you was furnished to you without any charge, is that correct?

A. Why yes, yes, sure. I would like to answer that question a little bit different in regard to they were not compensated in any way at all from me, but I was doing business and trying to do business with firms that I knew would give us as low a price as any one and that is why I asked them to get out sketches and go ahead with it, because they have done the same for me many times before. I have bought quite a bit of equipment in my time and I have furnished quite a number of places.

Q. It is true they would do that for any prospect?

A. No.

Q. Say any reputable prospect?

A. They would have to know the party, know they were reliable. They wouldn't go in and put in



(Testimony of P. G. Denson.)

all those man hours unless they [308] felt they had better than a 50-50 chance of getting that business.

Q. That is just part of their business?

A. That is part of their business, yes. I think any of those firms would testify.

Q. Mr. Denson, going back to the discussion with reference to the contract, I believe you testified that at no time was anything said in Mr. Cooke's office, or anywhere else, about this agreement of September 24, 1945, being a preliminary agreement. Was that your testimony?

A. Well, I wouldn't say preliminary at all. It was really a contract that was binding and tied me in and it specifically states there if I don't perform that contract that I forfeit, Mrs. Mapes has the right to keep the ten thousand dollars I put up or the twenty thousand, and I was ready and willing to put up the twenty thousand instead of ten thousand.

Q. I want to call your attention to a copy of this contract and ask you to examine that, the original of the contract, and ask you if that isn't your signature?

A. Yes, this is my signature. This is the clause that we all initialed up here and inserted down there.

Q. I refer your attention to Paragraph 10, where it says: "The said lease shall contain all necessary provisions to fully effectuate the intent and purposes of the parties hereto as stated in this preliminary agreement and also to definitely [309] set forth all the usual or necessary conditions, to the end

(Testimony of P. G. Denson.)

that the rights and interests of each party shall be properly conserved and protected." That clause was in this when you signed it?

A. That was in there. What it means though, the regular form of lease here, subject in the State of Nevada and county and city of Reno here, to all their laws set up by them to be inserted in our lease. That is all embodied in their lease and that would be the kind of a lease that I feel that they would draw for me.

Q. Mr. Denson, in view of this Clause 10 I have just referred to and which you read and which refers to this fact of this being a preliminary agreement, I will ask you to state as a fact whether or not this was considered as a preliminary agreement?

Mr. Sinai: We object, your Honor, on the ground the instrument is the best evidence of what it says.

The Court: The objection is good. It will be sustained.

Mr. Cooke: We would like the record to show our exception to that ruling, your Honor, on the ground that Mr. Denson stated a moment ago that this was not a preliminary agreement and we have the right on cross-examination to ascertain why, in view of the expressed provision of the contract, he makes that statement. It is strictly cross-examination.

Mr. Sinai: We submit, if the Court please, [310] to peruse examination of this type would be merely argumentative.

(Testimony of P. G. Denson.)

The Court: He just stated his grounds of exception. The ruling stands. He may have an exception on the grounds stated.

Q. Mr. Denson, you testified that you conferred with some concern by the name of McMahon?

A. McMahon Furniture Company.

Q. Where are they located?

A. I can't give you all, I can give you some—Fresno, California, Visalia, I am pretty sure Bakersfield, and out of Santa Monica. They are a very, very large concern.

Q. Did you obtain any plans from them?

A. I did not, no. The fact I knew Mr. McMahon for quite a while and Mr McMahon had known for some time that I was——

Mr. Cooke: We object as not responsive, your Honor, we object to it.

The Court: The latter part may go out.

Q. I believe you also testified that you contacted a firm known as W. J. Sloane?

A. That is correct.

Q. Did you obtain any plans from them?

A. I did not. I left some plans with them.

Q. But they submitted no plans?

A. They did not, no.

Q. In addition you testified that you contacted representatives [311] of Mangrum, Holbrook & Elkus. Where is that firm located?

A. In San Francisco.

Q. Did you obtain any plans from them?

A. I did.

(Testimony of P. G. Denson.)

Q. Do you have those plans with you?

A. I have the first plan that he furnished to me and also have a copy of the plan that he furnished to Charles.

Q. But you didn't bring them with you?

A. They are here.

Mr. Platt: Do you want to see them?

Mr. Sinai: Do you want them?

Q. Mr. Denson, I believe you stated that Mangrum, Holbrook & Elkus furnished some plans to Charles Mapes?

A. Well, I will say this. I won't say that he furnished them to him. It was my understanding that he sent them to him, anyway I was given a copy of the plan that he had gotten out for Charles and he told me of Charles' interview with him and also given me, I think, some of the specifications.

Q. Who was it that gave you the specifications?

A. Mr. Brown. He is the draftsman. I am not sure whether he contacted Mr. Moorehead's office or not. He told me of Charles' visit.

Q. Well, Charles Mapes Jr. was the one that ordered those plans from Mangrum, Holbrook & Elkus, rather than you, is that [312] true?

A. No, I was the one.

Q. Why did he send the plans to Charles?

A. Well, Charles told him I was out of the picture, that he would settle up with him and the next time I called on Mr. Brown that was the information I got from him.

(Testimony of P. G. Denson.)

Q. Did Mr. Brown tell you that Charles told him that?

A. Did Mr. Brown tell me that?

Q. Yes.

A. Yes, he did.

Q. When did this conversation take place?

A. Well now I would say I know this, I know it was after—either the latter part of—during the latter part of April or May. The plan would show the dates of those things.

Q. It was after April 1st?

A. Oh yes, it was after April 1st that Mr. Brown told me of the conversation with Charles, when Charles called on him.

Q. Did he tell you when Charles called on him?

A. Well, he might but I can't say just when it was. Probably the data and everything will show the dates, if you care to see them.

Q. You don't know whether it was before or after April 1st?

A. In regard to Charles?

Q. Yes.

A. I give you my word of honor it was after April 1st, even [313] after April 5th.

Mr. Platt: 1946?

A. Of 1946, of this year.

Q. Mr. Denson, were you in Mr. Cooke's office about April 10, 1946?

A. I was in his office on April 10, 1946 through three o'clock, absolutely.

(Testimony of P. G. Denson.)

Q. I believe you testified that Mr. Cooke was present?

A. Oh yes.

Q. And Charles Mapes was present.

A. We went there by appointment Charles had made.

Q. Isn't it true that on that occasion, in the presence of Charles Mapes, that you were told the ten thousand dollar deposit that you put up would be refunded to you?

A. I think my testimony will explain word for word what took place in regard to what led to——

Mr. Platt: Well, answer the question.

A. Yes, he told me the easy way to settle it would be to give me back my ten thousand dollars and I informed him I did not come over there to take down my deposit on my contract.

Q. He did offer to give it back?

A. He didn't offer. He said the easy way to settle this thing would be to give me back my ten thousand dollars and I informed him my ten thousand dollars was a deposit on my contract and I didn't come over to take my ten thousand dollar deposit [314] down.

Q. Mr. Denson, isn't it a fact that from January 1, 1946 up to April 1, 1946, Mrs. Mapes, in numerous telephone conversations with you, requested you to come to Reno and settle up your affairs with Charles, make definite arrangements with him as to your association?

A. At no time.



(Testimony of P. G. Denson.)

Q. At no time at all?

A. At no time, no. There was never anything like that said between Mrs. Mapes and I because they were all familiar with what I was doing..

Mr. Cooke: I move to strike out the latter part there as not responsive to the question.

The Court: The latter part may go out.

Q. Well, during that same period, Mr. Denson, didn't Mrs. Mapes call you on the phone on numerous occasions and ask you to come to Reno for the purpose of settling up the matters pertaining to this proposed lease?

A. I answered that. At no time did Mrs. Mapes ever phone me and ask me to come there in regard to the lease. It was discussed whether I should be in Reno or not and I was willing at all times, after I closed out my hotel. Mr. Moorehead informed them it would be more valuable to him for me to be around his office where he could confer with me. Mr. Moorehead told them that.

Mr. Cooke: I move that be stricken.

The Court: It is not responsive, it may go out.

Q. Mr. Denson, what I had in mind was this: the first question I asked you was with reference to any telephone conversation between you and Mrs. Mapes.

A. I answered that.

Q. Concerning your agreement with Charles.

A. I understood your question and I answered it.

Q. Your answer is the same to both questions?

(Testimony of P. G. Denson.)

A. Yes, excepting as I told you of my conversation with Mrs. Mapes on March 25th of 1946. I phoned Mrs. Mapes. Mrs. Mapes did not phone me, and I talked to Mrs. Mapes on the phone and she said she was sorry that Charles was not here, there was a little something he wanted to mention about the sky room.

Q. Yes, I recall.

A. I did receive a phone call from Charles before the contract was signed, to meet with him, to come over to get at a contract.

Q. Mr. Denson, can you state how many telephone calls you have received from Mrs. Mapes concerning your negotiations in connection with this hotel during the time you have been dealing with her?

Mr. Platt: Do you mean before the signing of the contract or afterward?

Q. Any time. Just a moment—let me correct that—after the [316] date of September 24, 1945, when the agreement was signed, can you state how many times Mrs. Mapes called you with reference to matters pertaining to the hotel?

A. I don't recall, in fact, I am practically positive that Mrs. Mapes has never called me herself on the phone from Reno or any other place after the 4th of October that I was over here. Any phoning that was done, I did it myself.

Q. Did Charles ever call you on the phone?

A. Yes, Charles phoned me afterward.

(Testimony of P. G. Denson.)

Q. Have you any idea how many times he called you?

A. Well now I do know of one time that he phoned me. He might have probably phoned at Visalia to find out where I was and he got me in Los Angeles, due to the fact that I was down there closing my deal, and he phoned me in Los Angeles and wanted me in Mr. Moorehead's office to go over the plans. Now this was after the contract was signed, of last year. That was in December and I think the record will show that I met Charles on the 28th of December in Mr. Moorehead's office and spent the day with him, which they deny. I am almost positive that is the date. I have the record with me of the hotel where he registered and the date he registered.

Q. That is your recollection, December 28th?

A. I think that was December 28th. I am almost positive.

Q. And the telephone conversation was several days prior?

A. No, it was either the day before or the day before that, [317] either the 26th or 27th, because I drove back to Visalia, stayed all night, and left the next morning in order to keep my appointment there and was there on time in Mr. Moorehead's office.

Q. Do you recall whether on November 26, 1945, you had a talk with either Charles or Mrs. Mapes on the phone?

(Testimony of P. G. Denson.)

A. It could have been the 26th I talked to Charles.

Q. This is the 26th of November?

A. Oh no, this was December I am speaking of, December, either the 28th——

Mr. Platt: (Interrupting) Counsel is asking a question.

A. Pardon me.

Q. I asked you, Mr. Denson, if you had a telephone conversation with Mrs. Mapes or Charles, either one called you on the telephone on November 25, 1945?

A. Well, he might have.

Q. Do you recall?

A. I can't remember the conversation or whether they called me or whether I called them.

Q. Do you remember any telephone conversation had between you and either Mrs. Mapes or Charles on December 12, 1945?

A. I might have talked to them on the phone. I know I called them quite often.

Q. I mean did they call you? [318]

A. The only time I can remember is when Charles phoned me in December, but he could have phoned me before, but I just don't recall it.

Q. Well, did Charles or Mrs. Mapes either call you on March 29, 1946?

A. March 29th?

Q. March 29, 1946?

A. March 29, 1946?

Q. Yes sir.

(Testimony of P. G. Denson.)

A. Charles called me—now let me get the way it was—I called them on the 25th and 26th and the 27th. Now it might have been the 29th and that was probably Friday, because he was to call me the next day, Wednesday, but he didn't, he waited. It was probably either Friday or Thursday, as I said before. I received a call from him wanting to meet me. That is when he told me on the 26th he would phone me to specify the time and date to meet him in Mr. Moorehead's office.

Q. Then there were other instances, other than this December 27th or 28th, 1945, when either Charles or Mrs. Mapes called you on the telephone?

A. That is the only time I remember Charles calling me, was after I talked to Mrs. Mapes, when he called me on the 29th of March, 28th or 29th of March, I guess it was, because I came up on Sunday, was the 31st of March, and I came to San Francisco on the 31st by plane in order to be here to meet him the [319] next morning.

Q. Did I understand you to say that you talked with Mrs. Mapes?

A. On March 25th for 8 minutes and the records show it.

Q. That was on the telephone?

A. On the telephone, yes. I have those records with me.

Q. That was on your call to her?

A. My call to Mrs. Mapes and then I called Charles the next day, on the 26th. I have the

(Testimony of P. G. Denson.)

records to show that. But Charles did phone me on either the 28th or 29th, I am positive of that.

Q. Where were you, Mr. Denson, at the time you got that call on the 21st of March?

A. I was at the Figueroa Hotel. Either he caught me at the Figueroa Hotel or the California State Hotel Association State Hotel Association at 607——

Q. In what city was it?

A. Los Angeles. It is their office, 607 So. Hill Street,

Mr. Furrh: That is all, your Honor.

The Court: Any further examination?

### Re-direct Examination

By Mr. Platt:

Q. You testified, Mr. Denson, that you secured plans from Mangrum, Holbrook & Elkus, that you conferred with a Mr. Brown of that firm?

A. Yes, [320]

Q. Have you those plans with you?

A. We have them here, yes.

Q. Will you submit them?

A. Here is one. This is March 8, 1946 by Mangrum, Holbrook & Elkus and this particular lay-out there and here is one of June 6th. This is the one that he made up for Charles and it was supposed to be the same lay-out of the details. This is August 13th to Mr. Charles Mapes, this plan here. This date is 6-13-46. This is the copy that he gave me when he told me that Charles had been in. This is



(Testimony of P. G. Denson.)

the one he brought down to the Sir Francis Drake and one he offered me and I told him he would have to make it out to a larger scale and more detail. I wouldn't be able to explain it as it was.

Q. These were plans furnished you?

A. Yes, these he kept sending me. These others—they have Charles' name on it, those three plans there and this is also in regard to specifications and details.

Q. These plans are with respect to the furnishing and equipment of the hotel?

A. Of the culinary department.

Q. Of the culinary department?

A. That's right.

Mr. Platt: We offer them in evidence.

Mr. Furrh: If your Honor please, we would like to ask the witness a few questions.

The Court: You may do so.

Recross-examination

By Mr. Furrh:

Q. Mr. Denson, you previously testified that the various plans which you obtained from these concerns were furnished to you without any charge on the part of the particular company involved and that same thing applies to these plans, does it not?

A. Same thing applies to these plans.

Q. Mr. Denson, do you know whether any of these plans that I have in my hand were adopted for use of the hotel that is being constructed?

(Testimony of P. G. Denson.)

A. I couldn't tell you. In my opinion not. I understand they have given the contract to the Dohrmann people.

Q. And so far as you know the building hasn't been constructed to conform with any of these plans?

A. At the time we were getting these plans, we would liked to have had plans so the plumbing could have been arranged for, but Mr. Moorehead decided to drill the concrete floor for connections and roughing in of the plumbing.

Mr. Cooke: The defendants object to the admission in evidence of the documents identified by the witness and questioned about by counsel, on the ground that it affirmatively appears that they do not constitute any part performance or portion of part performance; that there is no contract pleaded, oral contract pleaded on which there could be any part [322] performance, that the papers in question in any event simply constitute an expense to whoever furnished them, to be remedied by payment of dollars and cents and therefore could not, under the rules of equity, constitute part performance; that the party furnishing them, if he had any claim at all, would have his action for recovery of the amount that he paid for them, and in this case it does not appear that Mr. Denson paid anything whatever for them and hence they are incompetent and irrelevant and simply encumbering the record. We would like to add our general objection also

heretofore stated to Exhibits E and F, that the complaint does not state a cause of action for performance on a written contract and does not state a cause of action for part performance on an oral contract, there being no oral contract alleged.

The Court: Objection overruled. This will be Exhibit K admitted in evidence.

Mr. Platt: We have no further questions.

The Court: Any further questions of this gentleman, Mr. Cooke?

Mr. Cooke: No your Honor, not now.

The Court: This witness may be excused then.

Mr. Platt: We reserve the right to recall him if we desire.

The Court: Yes, you may recall him if you so desire.

Mr. Cooke: If the Court please, Miss Gloria Mapes is here under subpoena by the plaintiff and I would like to inquire if she will be called today; if not I would like to have her excused. She has some engagements of her own to attend to.

Mr. Platt: We have no objection, if she would be on call.

The Court: Is there a possibility she might be called?

Mr. Platt: I think it is remote.

The Court: Will she be somewhere where she will be available?

Mr. Cooke: Yes, we can get her on call.

The Court: She may be excused then.

## T. P. MOOREHEAD

a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Platt:

Q. Will you state your full name?

A. Theodore Parker Moorehead.

Q. What is your residence address?

A. 374 - 63rd Street, Oakland.

Q. What is your business address?

A. 433 - 14th Street, Oakland.

Q. What is your business or profession or vocation?      A. Civil engineer by profession. [324]

Q. You have been so engaged for many years past?      A. Since 1905.

Q. In connection with your business have you ever prepared plans and designs, specifications, for hotel buildings?      A. Many of them.

Q. Are you acquainted with the plaintiff in the action, Peter G. Denson?      A. I am.

Q. Do you remember when you first met him?

A. About 1929.

Q. And where, if you recall?

A. In San Francisco.

Q. Do you remember under what circumstances you met?

A. He was interested in operating a hotel which I was developing in Salem, Oregon.

Q. Did you have business connections with him on that occasion?

(Testimony of T. P. Moorehead.)

A. The deal never went through.

Q. But you did have business relations?

A. Just in connection with his operating the hotel.

Q. You have met and known him many times since?

A. I didn't meet Mr. Denson again until 1944.

Q. What was the occasion of your having met him at that time?

A. I heard that there was a lady in Reno building a hotel and Mr. Denson knew who she was. [325]

Q. Do you recall about when it was in 1944 that you interviewed him about what you have said?

A. May or June, I would say, May or June, 1944.

Q. Are you acquainted with the defendant, Mrs. Mapes, Irene Gladys Mapes?      A. I am.

Q. And Charles W. Mapes, Jr.?      A. I am.

Q. And Gloria Mapes?      A. I am.

Q. And under what circumstances did you become acquainted with all three of the defendants?

A. I first met Mrs. Mapes—I wrote Mrs. Mapes that I heard she was going to build a hotel in Reno and I would like to get in touch with her. I had no reply to that letter. Then I telephoned Mrs. Mapes and told her I would like to discuss the matter with her and she said she would be glad to see me if I came to Reno, so I came to Reno and met Mrs. Mapes at her residence in Reno some time in July, I would think it was, of 1944.

Q. You had never heard of Mrs. Mapes or any of

(Testimony of T. P. Moorehead.)

the other defendants until your conversation with Mr. Denson about which you have testified?

A. No.

Q. Are you acquainted with the property in Reno, Nevada, generally [326] known as the Mapes Hotel site?      A. I am.

Q. Under what circumstances did you become acquainted with that?

A. I am building the hotel for Mrs. Mapes.

Q. When did you first confer with Mrs. Mapes with respect to the building of the hotel?

A. At the first interview.

Q. At the first interview?

A. The first interview.

Q. Who, if any one, was with you upon that first interview?      A. No one that I recall.

Q. You went by yourself?

A. Came up by myself.

Q. Was Mr. Denson's name mentioned in that conversation?      A. I think it was.

Q. By whom?      A. By myself.

Q. Do you remember what you told Mrs. Mapes?

A. I told Mrs. Mapes that Mr. Denson——

Mr. Cooke (Interrupting): The question is if you remember what you told her.

A. Do I know what I told Mrs. Mapes?

Q. Yes.

A. I don't remember the exact words, no. [327]

Q. No, I wouldn't expect you to, but do you remember in substance what you told her about Mr. Denson?      A. I told her that——



(Testimony of T. P. Moorehead.)

Mr. Cooke (Interrupting): He is not asking what you told.

The Court: Answer yes or no first and see what develops.

A. I don't know what I told Mrs. Mapes, not in words.

Q. I understand, Mr. Moorehead. You say that Mr. Denson's name was mentioned in this first conversation? A. I think it was.

Q. Do you know whether it was you or Mrs. Mapes that first mentioned Mr. Denson's name?

A. I couldn't tell you.

Q. Do you recall whether you mentioned Mr. Denson's name?

A. During the course of the convention I probably did.

Q. Do you recall what you said to Mrs. Mapes about Mr. Denson, just answer yes or no.

A. Do I recall? Yes, I think I do.

Q. Well, what did you say?

Mr. Cooke: We object to it as incompetent, irrelevant and immaterial. It occurred two years before there were any contractual relations with the plaintiff, that it couldn't be anything but preliminary negotiations or circumstances. It isn't shown that Mr. Denson was a party to the transactions [328] and what was said there between Mrs. Mapes and Mr. Moorehead, if it had any bearing at all, would be conclusively presumed to be merged in the written contract of September 24, 1945. That this talk, fragmentary conversation, had immediate prior to that are all inadmissible, cannot constitute legal

(Testimony of T. P. Moorehead.)

evidence for any purpose whatsoever. We object on the further ground that the written document must speak for itself. If it is evidence for any reason, it cannot be sufficient by relation of conversations between various parties with Mrs. Mapes or any of the defendants prior. If it is evidence as a matter of law, the law speaks for itself; if it is evidence as a matter of fact, you can supply it by testimony of preliminary negotiations or preliminary talks, but this does not refer even to the conducting of preliminary negotiations because it is not between Mr. Denson and Mrs. Mapes at all; just a mere social talk between Mr. Moorehead, who at that time had no connection with the subject matter, wasn't authorized to speak for anybody except himself, and was a talk with Mrs. Mapes about what she hoped to do about the hotel building and the like.

The Court: I have some doubt as to the admissibility of this conversation or statement. But the question asked for a statement, not a conversation.

Mr. Platt: That is all. [329]

The Court: I will sustain the objection. My reason for sustaining it is that the question calls for statement by this witness as to Mr. Denson. He is not an agent who has any responsibility for any information concerning Mr. Denson or responsible for any question concerning Mrs. Mapes.

Mr. Platt: If your Honor please, your Honor will recall that about all the allegations of this complaint are denied except the signing of the contract and we are attempting to show not only the efforts of Mr. Denson in complying with the terms,

(Testimony of T. P. Moorehead.)

conditions and covenants of the contract, but we also desire to show that he furnished the contractor or the builder who is now building the hotel. Mrs. Mapes, from that time on, has constantly called upon her builder and the cooperation of Mr. Denson, and we desire to show that she had never heard probably of Mr. Moorehead until Mr. Denson had come into the picture.

The Court: I wouldn't consider admitting such testimony covered by this offer, but I don't think this question has any relation whatever to the offer you just stated. The ruling will stand.

Q. Well, upon this first visit, Mr. Moorehead, about which you testified, what did you discuss generally with Mrs. Mapes?

Mr. Cooke: Objected to as incompetent, irrelevant, [330] and immaterial.

The Court: If this question is for the purpose of bringing out a conversation that took place at that time, the objection will be overruled.

Mr. Platt: Well, that is the purpose of it, your Honor.

The Court: The first question really asked for a statement of this witness. That is why I sustained the objection.

Mr. Cooke: We wish to state our objections at this time.

The Court: You may do so. The ruling will be withdrawn until you make your objection.

Mr. Cooke: We object on the ground that anything that was said between Mr. Moorehead and

(Testimony of T. P. Moorehead.)

Mrs. Mapes at that time is incompetent, irrelevant, and immaterial as to any evidence that there was any binding contract that was subject to specific performance, either under part performance theory or under any other theory, made on or about September 24, 1945, over a year later. That it is at most merely a talk between Mrs. Mapes and Mr. Moorehead, with a view of constructing the building, I take it, which would have nothing to do with the relation which Mr. Denson might have. It is not offered for any such purpose apparently. With regard to the allegations in the complaint or amended complaint, where it is alleged [331] that Mr. Denson furnished the contractor and architect on the job, referring to Mr. Moorehead, that is objected to so far as being any proof of that matter is concerned, because that is not any part performance. We have heard considerable about that, your Honor, about bringing Mr. Moorehead into the picture. I wonder what would happen if Mr. Moorehead turned out to be a negligent, unsuccessful, and ignorant contractor and caused us millions of dollars of damages over there. We couldn't hold Mr. Denson for that, and why Mr. Denson should hold us on the theory he furnished us something of value because he casually or otherwise mentioned the name of Mr. Moorehead as a man who might do this job for us, is beyond me. It is making a mountain out of a mole hill, and it seems to me the whole thing of Mr. Moorehead being brought in here, as having anything to do with contractual relations of Mr. Den-

(Testimony of T. P. Moorehead.)

son and Mrs. Mapes is absolutely without any foundation and we more particularly object, and insist upon it, that under no principle of law that ever I heard of, can parties bring in conversations had a year or more before, or any time before the contract.

The Court: That point, it seems to me, to have been waived by your own cross-examination of Mr. Denson. You opened up by inquiring into matters that took place in 1940 which have been excluded by ruling of the court on direct examination. [332]

Mr. Cooke: All right, questioned on that and then went back to 1944 and they opened that up.

The Court: No, you opened it up on cross-examination.

Mr. Cooke: 1944?

The Court: You went back to 1940. So is that the full statement of your objection?

Mr. Cooke: Yes, sir.

The Court: Objection will be overruled. The witness may answer the question. Will the reporter please read the question to the witness?

(Question read.)

Mr. Platt: I will withdraw this question and put it in this other form, your Honor.

Q. What conversation, if any, did you have with Mrs. Mapes upon that occasion?

Mr. Cooke: Same objection, your Honor, to the question as amended.

The Court: That will be the same ruling.

A. The conversation was in connection with fur-



(Testimony of T. P. Moorehead.)  
nishing our services for designing and constructing the hotel.

Q. And during that conversation was the name of the plaintiff, Mr. P. G. Denson, mentioned?

A. I have already said it was.

Q. And do you remember who first mentioned it?

A. No. [333]

Q. How long were you in the presence of Mrs. Mapes upon that first occasion?

A. Oh, perhaps two hours.

Q. Was there any one else present except you and Mrs. Mapes?

A. During the conversation only Mrs. Mapes, so far as I can remember, I may have met Gloria and some other people. I don't recall whether they were there at that particular time.

Q. And did you see Mrs. Mapes after that first interview? A. Yes.

Q. And when and where was that?

A. On two or three occasions here in Reno.

Q. Do you recall about what the dates were?

A. I can't recall the dates. It was some time between July and well up to the present time, as far as that goes, I have had interviews with Mrs. Mapes.

Q. In any of these interviews or conversations that you had with Mrs. Mapes was anybody else present?

A. Oh, when we came Mr. Cooke was present. I don't recall whether Charles was present at any of those times or not.



(Testimony of T. P. Moorehead.)

Q. You are referring now to interviews with Mrs. Mapes here in Reno? A. That's right.

Q. Was Mr. Denson, the plaintiff, present at any of these conversations?

A. I do not think so. [334]

Q. In any of these conversations that you had with Mrs. Mapes was the question of who was to lease or manage the hotel discussed with her?

A. Not in detail. It may have been brought up, not in detail.

Q. Well, was it mentioned at all?

A. Yes, I think it was.

Q. When was that mentioned?

A. Oh, on some subsequent conversation.

Q. Can't you give us an approximate date?

A. Oh, it may have been in August.

Q. Of 19——? A. '44.

Q. And do you remember where that was mentioned?

A. I only saw Mrs. Mapes in Reno during 1944, yes.

Q. Well, the mention of the management or lessee of the hotel was made during one of these 1944 interviews? A. Yes.

Q. What was the conversation between you and Mrs. Mapes with respect to the management or lessee or lessees of the hotel on that occasion?

Mr. Cooke: Defendants object on the ground it is incompetent and immaterial; that it isn't claimed here that Mr. Denson is the manager or ever was

(Testimony of T. P. Moorehead.)

agreed upon as the sole manager and operator of this hotel under any condition; that the evidence is inconsistent with the case sought to be made [335] by the complaint; that it is not any evidence upon which specific performance can be based in any event; that whatever was said upon the subject by Mrs. Mapes and Mr. Moorehead would be determined by the written contract that was subsequently agreed upon, which contains no reference to his being the manager of the hotel at all; that this is going outside of any contract or any writing or any undertaking by either of the parties; that there is no claim made that Mr. Denson had any agreement with anybody that he was to be the manager of this hotel; therefore, if your Honor please, it seems to me that this is objectionable and inadmissible, together with the reasons advanced in other objections that I have heretofore made. We certainly can't be charged with having opened up this feature. Your Honor overruled an objection that I made as to a conversation in regard to Mrs. Mapes and Moorehead on direct examination, so I don't understand how it could be admitted upon any theory that we waived any rights, because we have consistently and insistently rather made ourselves a nuisance by making objections about all these preliminary talks and arrangements either between Mr. Denson and Mrs. Mapes or Mrs. Mapes and anybody regarding this matter prior to September 24, 1945. Where parties have entered upon a written document, this is conclusively presumed to embrace all other pre-

(Testimony of T. P. Moorehead.)

vious negotiations and understanding with reference to the subject matter, so we do not feel that we have [336] waived any rights in that regard, but we have maintained that stand before your Honor from the start.

The Court: Objection overruled. You may answer the question.

(Question read.)

A. We discussed the leasing or operating of the hotel and she told me that there were several people who were interested in operating the hotel. I can give you some names that she was negotiating with, various people—she wasn't negotiating, but had approached her in regard to operating the hotel and also in regard to purchasing the property or leasing the property.

Q. Do you recall whether Mr. Denson's name was mentioned?      A. It was.

Mr. Cooke: Same objection.

The Court: The answer may be withdrawn and the objection made and there will be the same ruling. Now answer the question. What is the answer to that question?

A. Yes.

Q. Do you remember who mentioned the name of P. G. Denson?

Mr. Cooke: May this same objection go to all questions in regard to conversation at that time without repeating, your Honor?

(Testimony of T. P. Moorehead.)

The Court: It may be so considered. Same ruling. [337]

(Question read.)

A. We both mentioned the name.

Q. Well, do you recall what was said by either one of you or both with respect to Mr. P. G. Denson?

A. That Mr. Denson was interested in taking the lease on the hotel.

Q. Who said that?

A. I perhaps said it and Mrs. Mapes may have said it. I know that Mr. Denson had told me he was interested in taking a lease on the hotel.

Mr. Cooke: I move to strike the latter part on the ground it is hearsay.

Q. Well, it is what you told Mrs. Mapes, isn't it?

A. Yes.

Mr. Cooke: You told her that Mr. Denson had told you he was interested?

A. That is right.

Mr. Cooke: I see. I withdraw my objection.

Q. Did Mrs. Mapes inquire of you as to Mr. Denson's responsibility and ability?

A. No.

Q. Was that discussed between you?

A. It was discussed but I wasn't in any position to say just whether Mr. Denson was responsible or not at that time.

Q. Well, you say it was discussed? [338]

A. Yes.

Q. Can you state about what was said by either

(Testimony of T. P. Moorehead.)

of you, or Mrs. Mapes, or both of you, concerning Mr. Denson?

A. I told her that I knew Mr. Denson.

Q. What did you say?

A. What did I say?

Q. Yes.

A. I can't tell you that.

Q. Can't you remember about what you said?

A. I can say that I worked with Mr. Denson on this project in Salem in 1929 and that we were working on a deal for a hotel at that time. As to anything regarding Mr. Denson's responsibility, I don't think I made any statement regarding his responsibility in regard to the hotel.

Q. Well, was your statement with respect to your working with Mr. Denson on the other hotel project that you have talked about in response to an inquiry that was made by Mrs. Mapes to you?

A. I couldn't tell you that. We discussed Mr. Denson. Whether Mrs. Mapes asked me or I brought up Mr. Denson's name, I couldn't tell you. I know we discussed Mr. Denson but I did not tell Mrs. Mapes whether I thought Mr. Denson was financially responsible to operate a hotel because I didn't deal—it was a matter entirely between Mrs. Mapes and Mr. Denson, not between me and Mrs. Mapes. I was only there for the purpose [339] of selling my own services.

Q. Did you tell Mrs. Mapes that Mr. Denson had told you to interview her?

(Testimony of T. P. Moorehead.)

A. I told—yes, I told Mrs. Mapes that.

Q. These conversations about which you are testifying occurred, as I understand, in the year 1944?

A. They extended clear into 1945 until I obtained this contract, my own contract, from Mrs. Mapes and Charles W. Mapes.

Q. Did you ever have any conversations with Mrs. Mapes or any of the other defendants, Charles or Gloria, in any other place except the City of Reno?

A. Yes.

Q. When and where did they occur?

A. In San Francisco on two occasions. One at the Sir Francis Drake Hotel in San Francisco on V-J Day and another at the Fielding Hotel. I don't recall that date.

Q. Do you recall who was present at the conversation at the Sir Francis Drake Hotel?

A. Mrs. Mapes, Mr. Denson, Mr. Slocum. I don't recall whether Charles was there at that time or not.

Q. Who was Mr. Slocum?

A. Mr. Slocum is an architect that I engaged to be associated with us in the design of this building.

Q. How did it happen that you met with Mr. Denson and Mrs. Mapes and the people you mentioned, Mr. Slocum and others, in [340] San Francisco at the Sir Francis Drake Hotel on this occasion?

A. It was for the purpose of discussing——

Q. Pardon? A. How did it happen?



(Testimony of T. P. Moorehead.)

Q. How was it arranged that you were to meet at that time?

A. It was prearranged in order——

Q. (Interrupting): Who arranged it?

A. Mr. Denson and myself.

Q. Do I understand by that that Mr. Denson informed you that such a meeting would take place?

A. No. May I withdraw. I sought the interview. I wanted to get the sketches which we prepared gone over and discussed so that we could know just what we could do in getting out the sketches.

Q. How did you seek the interview? Did you talk to Mr. Denson first about it or Mrs. Mapes or Charles Mapes or someone else?

A. I think I talked to Mr. Denson first and asked if he could be here and then either I or Mrs. Denson got in touch with Mrs. Mapes and asked if she could be in San Francisco. I don't recall whether it was myself or Mr. Denson phoned Mrs. Mapes.

Q. Do you remember whether you phoned Mrs. Mapes?

A. I just said I don't remember whether I phoned or Mr. Denson.

Q. But at any rate she was there for the interview? [341]      A. Yes.

Q. And what was the date of that interview?

A. That was V-J Day. That date I do not recall. Mr. Denson said either August 14th or 15th, whatever day V-J day was; I remember that.

Q. What year?      A. 1945.

(Testimony of T. P. Moorehead.)

Q. At any rate, it was the day the Japanese surrendered?

A. That's right. I recall that.

Q. Where did that meeting take place?

A. On the mezzanine floor of the Sir Francis Drake Hotel in San Francisco.

Q. What was done and said at that meeting?

Mr. Cooke: Just a moment. Another meeting and another occasion, August 14, 1945, and I am forced again to insist upon my objection on behalf of the defendants that this is incompetent and immaterial and irrelevant, being a part of the alleged preliminary negotiations occurring prior to the date of the signing of the Exhibit C, the agreement, over a month later, and that whatever was said or done at this meeting bearing upon the question of the contract, or proposed contract, would be conclusively deemed to be merged in the contract and hence inadmissible for any purpose whatever, there being no allegation of mistake or fraud mixed up in the case. I do not know just how I can state that objection any [342] stronger, your Honor. You consistently overruled the objection from the start, but any way that represents our position, that there is no exception to that rule that would permit of this type of evidence, so far as we know. There is no reason why this case should be an exception to the thousands of cases involving similar situations, where it is sought to bring out what was said, etc., prior to the making of a written agreement and it

(Testimony of T. P. Moorehead.)

has been invariably excluded, and we think that that rule is applicable here, your Honor.

The Court: The objection will be overruled. The witness may answer the question.

(Question read.)

A. Examination of preliminary sketches were made.

Q. Who submitted the sketches? A. I did.

Q. And of what were they?

A. Plans of the hotel.

Q. Of the hotel proper?

A. Floor plans of the various floors of the hotel.

Q. Were any suggestions made by anybody as to modification and change of those plans?

Mr. Cooke: May our objection apply to all similar testimony that occurred at this time, your Honor?

The Court: It may. Same ruling.

A. Yes, there were suggestions made. [343]

Q. Do you recall who made them?

A. Probably Mrs. Mapes.

Q. Did Mr. Denson make any? A. Some.

Q. What suggestions do you recall that suggestions were made by Mr. Denson, the plaintiff, at that time? A. About the check rooms.

Q. What else?

A. The number of rooms that we should have in the hotel as a whole.

Q. What change did he recommend as to that?

(Testimony of T. P. Moorehead.)

A. He recommended a minimum number of rooms, not to have too many rooms.

Q. What other change did he recommend?

A. I can't recall any other, no particular changes. There were undoubtedly other changes but I can't recall just what particular changes were recommended. Both Mrs. Mapes and Mr. Denson made suggestions as to what the size of the rooms should be and the number of showers, number of baths, and so on and so many details developed I don't remember. Those, you understand, were only preliminary plans. They were not the working drawings, not the plans as adopted.

Q. Were those preliminary suggestions made by Mrs. Mapes and Mr. Denson adopted and made a part of the preliminary plans?

A. Some were and some weren't. We objected to some and [344] showed where some of the objections were not sound. Other suggestions were sound and some we put in which we did not recommend ourselves. The owners wanted it and Mrs. Mapes wanted it so we put in what Mrs. Mapes wanted.

Q. And do you recall when next you met with Mrs. Mapes or Charles or both of them, and Mr. Denson in San Francisco?

A. I saw Charles on one or two occasions in Oakland because he was in the service in Oakland and we met again with Mrs. Mapes in San Francisco at the Fielding Hotel on a subsequent date.

Q. Who were present at that meeting?

(Testimony of T. P. Moorehead.)

A. Mrs. Mapes and Charles, Mr. Denson, Mr. Slocum and myself.

Q. And where in the Fielding Hotel did you meet?

A. On the mezzanine floor, the second floor, the lounge space.

Q. What was said and done at that meeting?

A. We again discussed——

Mr. Cooke: Will you fix the date of that, Mr. Platt?

Q. Yes; can you give us the date of that meeting at the Fielding Hotel?

A. It must have been in early September.

Q. In 1945?           A. In 1945.

Mr. Cooke: I object on the ground that it affirmatively appears by the statement “early September” that the conversation asked for was prior to the execution and delivery [345] of the document, Exhibit C, which purports to be the only written agreement of any kind in the case and which embraced all of the terms that the parties saw fit to put into it at that time and anything said or done prior to that time between parties with reference to the subject matter appeared to be embraced in that document and therefore evidence on it is not admissible.

The Court: The objection will be overruled. Answer the question.

(Question read.)

A. We were there for the same purpose, discuss-

(Testimony of T. P. Moorehead.)

ing our sketches that had developed since our previous meeting.

Q. Did you submit plans and sketches at that time? A. Yes, and also elevation.

Q. And were any suggested changes made by any one present?

Mr. Cooke: Same objection, your Honor, may go to all this same testimony as to this meeting?

The Court: It may be so considered. Same ruling.

A. There were some suggestions, yes.

Q. Do you recall who made them?

A. Mrs. Mapes probably or Mr. Denson.

Q. And were the changes suggested by Mrs. Mapes and Mr. Denson adopted in the subsequent form?

A. Any changes requested by Mrs. Mapes were adopted.

Q. Were any changes suggested by Mr. Denson adopted? [346]

A. Only with Mrs. Mapes' approval.

Q. Well, were any suggested changes by Mr. Denson approved by Mrs. Mapes and later adopted?

A. That I couldn't say whether she approved. If any question came up, I asked Mrs. Mapes for her approval of it. Whether Mr. Denson's suggestions or Mrs. Mapes' suggestions, that I couldn't say. Any suggestion that was offered, any changes that were made, were changes made by Mrs. Mapes. Whether Mr. Denson suggested them in the first place or not, I cannot say.



(Testimony of T. P. Moorehead.)

Q. You don't remember whether Mr. Denson first suggested the changes or Mrs. Mapes?

A. I couldn't tell.

Q. But you do recall definitely that Mr. Denson made suggestions for changes? A. Yes, I do.

Q. And can you state now whether any of his suggestions were subsequently approved by Mrs. Mapes and incorporated in your plan?

A. I can't say definitely whether I do remember just what specific changes were made at that time.

Q. Was anything else discussed at that particular meeting at the Fielding Hotel except plans for the hotel structure proper? A. Not with me.

Q. Did Mrs. Mapes ever state to you, in substance, that she [347] contemplated that Mr. Denson and Charles Mapes were going to run and operate the hotel? A. I don't think she did.

Mr. Cooke: We object—this question calls for——

The Court: It is already answered, Mr. Cooke.

Mr. Cooke: I move to strike it so I can make my objection.

The Court: The motion will be denied.

Mr. Cooke: That question goes beyond the scope of the meeting at the Fielding Hotel. It is a general question as to he ever heard it.

The Court: If you would like to have the record show an objection and a ruling, it may be so deemed, so considered.

Mr. Cooke: Or an exception, either way.

(Testimony of T. P. Moorehead.)

The Court: All right, exception.

(Question and answer read.)

A. At that meeting at the Fielding Hotel, that is what you refer to?

Q. The question was intended to be more comprehensive than that.

A. She did. She told me prior to closing the agreement with Mr. Denson to lease the hotel that Mr. Denson and Charles were working on an agreement to operate the hotel. Is that the answer you wanted? [348]

Q. Well, I want you——

A. (Interrupting): I mean, that is an answer to your question?

Q. That is an answer to my question, and of course it was the answer I wanted.

A. Afterward she talked to me about it.

Mr. Platt: I think that is off the record.

Mr. Cooke: That was before signing of the agreement between Mr. Denson and Mrs. Mapes?

A. Yes.

Mr. Cooke: We make objection to the admissibility of that.

The Court: I will withdraw the ruling so you can object.

Mr. Cooke: I make the same objection.

The Court: Same ruling. Now you can answer the question.

(Question read.)

A. Yes.

(Testimony of T. P. Moorehead.)

Q. Do you recall about when she made that statement?

A. Some time during 1945 from our first meeting, oh, I would say some time between June and September, 1945.

Q. Did you ever have any conversation with Mrs. Mapes with respect to the capabilities of Mr. Denson as a hotel operator?

A. I have already answered that question.

Q. Well, if you did, Mr. Moorehead, I don't exactly recall it. [349]

A. I told you that I had conversation with Mrs. Mapes regarding Mr. Denson's operating a hotel that I offered no dictum as to Mr. Denson's responsibility for operating the hotel because that was entirely a matter for Mrs. Mapes to find out herself, not for me to give.

Q. Let me ask you this—did Mrs. Mapes ever at any time inquire of you as to Mr. Denson's qualifications as a hotel operator?      A. Yes.

Q. When did she make that inquiry?

A. Probably during the latter part of 1944.

Q. And do you remember what she said when she so inquired?      A. No, I don't.

Q. You don't?

A. I don't remember what she said when she so inquired, no.

Q. Do you remember what you said in reply?

A. Just what I told you in answer to the previous question; it was up to Mrs. Mapes to determine Mr. Denson's responsibility.

(Testimony of T. P. Moorehead.)

Q. Well, I want to get this straight in my own mind. I understood you to state, Mr. Moorehead, that Mrs. Mapes had inquired of you as to Mr. Denson's capabilities or qualifications as a hotel operator. Now am I correct in stating that you said that she had so inquired?

A. That is right, she did. [350]

Q. And you also stated that she inquired about that some time in the year 1944? A. Yes.

Q. Did she ever inquire after that time?

A. I don't think so. I think it was only discussed on one or two occasions.

Q. Well, when she asked you concerning the qualifications and capabilities of Mr. Denson as a hotel operator, what did you say?

A. I told her——

Mr. Cooke: Objected to as irrelevant and immaterial. The question of his abilities is not involved in the case. I also make the same general objection.

Mr. Platt: They are involved in the case.

The Court: Objection will be overruled. The witness may answer the question.

Mr. Cooke: I would like counsel to point out what part of qualifications——

The Court (interrupting): It is not necessary. The ruling has been made.

Q. Kindly answer the question.

(Question read.)

A. I told Mrs. Mapes what hotel I knew that

(Testimony of T. P. Moorehead.)

Mr. Denson had operated, which were the Hotel Tioga in Merced, the Hotel Medford in Medford, Hotel Johnson, which he was then operating [351] in Visalia. I knew nothing further of Mr. Denson's hotel operations.

Q. You have testified, Mr. Moorehead, concerning the two meetings in San Francisco, one at the Sir Francis Drake Hotel and the other at the Fielding Hotel. Was your architect, Mr. Slocum, present at both these meetings?           A. Yes.

Q. Have you had any subsequent meetings in San Francisco since the two you mentioned?

A. With Mrs. Mapes?

Q. Yes.

A. Mrs. Mapes has been in Oakland once.

Q. And did you meet her at that time?

A. Yes.

Q. And do you recall about when that was?

A. Quite recently.

Q. Pardon?           A. Since April, 1946.

Q. Since April, 1946?           A. Yes.

Q. And was that interview by appointment?

A. No. Mrs. Mapes was coming to Oakland or to San Francisco for some specific purpose and came to my office.

Q. What was the general nature of the conversation upon that occasion? [352]

A. In connection with the construction of this building.

Q. Do you remember what was said?

(Testimony of T. P. Moorehead.)

Mr. Cooke: The question is whether you remember or not.

A. I do not.

Q. You don't recall anything about that conversation?

A. I know it was in connection with the construction and operation and plans.

Q. Did you have a conversation with Mr. Denson at Visalia at the Hotel Johnson? A. I did.

Q. On or about August 31, 1945, with respect to the plans of this hotel? A. August, 1945?

Q. Yes.

A. I don't recall August, 1945, in Visalia.

Q. Well, what is your best recollection?

A. I was in Visalia in December, 1945.

Q. I was advised that date was August 31st but I may have the wrong information.

A. I was in Visalia on two occasions at Mr. Denson's hotel and discussed it with Mr. Denson.

Q. Do you remember approximately about the date of these occasions?

A. I know one was in December. [353]

Q. 1945?

A. 1945. The other was prior to that and may have been in August, I wouldn't want to say. Mr. Denson has the record in his hotel register and can tell you.

Q. And were any suggestions made to you upon either one of these occasions as to a modification or change of any of the plans submitted?



(Testimony of T. P. Moorehead.)

A. Yes, there were.

Q. Do you recall what suggested changes Mr. Denson made?           A. Mr. Denson——

Mr. Cooke: Just a moment. I interpose an objection on the part of the defendants, your Honor, that this is hearsay; that Mr. Moorehead is their agent for the purpose of constructing the building but not their agent for the purpose of making the contracts for them or affecting their contractual relations with Mr. Denson or anybody else; that any discussions had between Mr. Moorehead and Mr. Denson, on the occasion mentioned being, one of them, being apparently prior to the signing of the agreement and the other being subsequent are equally inadmissible, do not constitute any legal evidence as to whether there was any contract that this Court is authorized to specifically enforce or not.

Mr. Platt: I want to state to your Honor, that my intention to interrogate Mr. Moorehead as I have and to further interrogate him is to ascertain whether Mrs. Mapes [354] approved any part or portion of the suggested changes and plans made by Mr. Denson, thereby connecting her definitely up with the changes. I haven't had the privilege of discussing with——

The Court: What is the date of this transaction?

Mr. Platt: One was some time in August, we think it was August 31, 1945, and the other was in December, according to the statement of the witness.

(Testimony of T. P. Moorehead.)

The Court: Objection will be overruled and answer the question.

(Question read.)

A. Yes.

Q. What were they?

A. Mr. Denson wanted one room less on Virginia Street than we had shown, one room less on the river frontage.

Q. Did he tell you why he wanted those changes?

A. Because he wanted them larger.

Q. He wished the remaining rooms larger?

A. Yes, that is right.

Q. And do you recall any other suggested changes he made?      A. No, I don't.

Q. Was this suggestion of his later adopted by you, with the approval of Mrs. Mapes?

A. I called up Mrs. Mapes and asked her if she would approve if I were to make the rooms larger.

Q. What did she say?

A. She said, "Yes, of course; I always wanted them larger."

Q. Don't you recall, or do you recall, Mr. Moorehead, that upon one of these interviews in Visalia that Mr. Denson not only made suggestions as to the size of the rooms, but likewise as to the size of the closets and that another elevator be added?

A. I do not remember Mr. Denson made those suggestions. We talked about making larger closets if possible. As regards additional elevator, Mrs.

(Testimony of T. P. Moorehead.)

Mapes said she wanted an additional elevator, also to provide an additional elevator in those plans we were developing at that time.

Q. Do you recall whether or not you discussed with Mr. Denson when you visited him on those two occasions in Visalia the question of increasing the size of the closets and putting in an additional elevator?

A. It may have been discussed. I wouldn't say that I recall the elevator was discussed. The closets were discussed.

Q. You remember now discussing the closets?

A. I remember discussing the closets, yes, I don't know whether at that particular meeting. It may have been at some other meeting. He urged as large closets as we could possibly get. Mrs. Mapes also urged as large closets as we could get. Whether Mrs. Mapes or Mr. Denson initiated it, I don't know.

Q. But the plans you had made available for both Mrs. Mapes [356] and Mr. Denson provided for smaller rooms, smaller closet space and likewise two elevators instead of three?

A. The plans as made at that time were two elevators instead of three.

Q. And subsequently, after you talked with Mr. Denson, these changes were made?

A. They were made at some subsequent date, yes.

(Testimony of T. P. Moorehead.)

Q. And the changes were made in your plans with the approval of Mrs. Mapes?

A. That is right.

(Recess taken at 12:00 noon.)

Wednesday, October 30, Afternoon Session

2:30 P.M.

All attorneys present as at previous session.

Mr. Moorehead resumed the witness stand on further direct examination by Mr. Platt.

Q. Mr. Moorehead, will you state whether there was any change in the plans of the so-called sky room of the hotel?

A. It had changes in it, yes.

Q. Did you discuss these changes with the plaintiff, Mr. Denson?

A. Yes, I discussed them with Mr. Denson.

Q. And do you recall about when and where this discussion took place? [357]

A. I think it was in January of '46, this year.

Q. And where did it take place?

A. I think it was in my office in Oakland.

Q. Do you recall who, if any one else, was present besides you and Mr. Denson?

A. No, I don't.

Q. Do you recall what suggestions he made with respect to the change of plans of the sky room?

A. Mrs. Mapes had talked to me——

Mr. Cooke (interrupting): He just asked if you recall.

A. If I recall?

(Testimony of T. P. Moorehead.)

(Question read.)      A. No, I don't.

Q. You don't?

A. I don't recall the suggestions Mr. Denson made.

Q. Didn't you state he made suggestions as to the change in the sky room plan?

A. Well, I don't know just what those were. He may have made some suggestions. There were various changes made at all times. One thing was the check room in the sky room. We did discuss a change of the sky room.

Q. Isn't it a fact, Mr. Moorehead, that the original plans of the sky room called for a curved indentation and that upon Mr. Denson's suggestion the plans were changed so as to [358] level it up and extend the width of the sky room?

A. Those were not Mr. Denson's suggestions. Mrs. Mapes' suggestion. Mrs. Mapes wanted from the very start to have that sky room cover all the whole floor and I fought against it. I thought the sky room was large enough and we discussed those things with Mr. Denson.

Q. Well, you said that Mrs. Mapes first made the suggestion?

A. From the very beginning Mrs. Mapes wanted the sky room larger and I argued it was adequate, quite large enough. Now I discussed those things with Mr. Denson and Mr. Denson concurred in Mrs. Mapes' view.

Q. What did Mr. Denson say with respect to

(Testimony of T. P. Moorehead.)

the suggestion which you say originally came from Mrs. Mapes?

Mr. Cooke: Objected to as irrelevant. The contract is signed by the parties in writing and therefore any oral testimony in regard to talk on these different occasions, as we see it, would not be admissible.

The Court: Objection will be overruled. The witness may answer the question.

(Question read.)

A. He agreed that it should be larger.

Mr. Cooke: What should be larger?

A. The sky room.

Q. Did Mrs. Mapes suggest to you that you take up the change in the sky room with Mr. Denson?

A. No.

Q. How did you happen to do it?

A. We were discussing plans. We discussed all the various phases of the plans. Mr. Denson was to be one of the lessees of the hotel.

Q. You understood that all the time?

A. I understood that, yes.

Q. And when there were any changes in plans you always discussed those changes with Mr. Denson?

A. Any changes pertaining to the hotel proper, yes.

Q. Did you ever tell Mrs. Mapes that you had conferred with Mr. Denson with respect to the change of the plans of the sky room?



(Testimony of T. P. Moorehead.)

Mr. Cooke: My objection may go to all of this?

The Court: Yes, the same objection may apply and the same ruling.

(Question read.)

A. I do not recall that I specifically told Mrs. Mapes that I had also spoken to Mr. Denson about it. Mrs. Mapes requested it, but I don't recall ever telling Mrs. Mapes specifically that I talked to Mr. Denson about it.

Q. But do you remember that you submitted modified plans, changing the arrangement of the sky room, to Mrs. Mapes? A. Yes, I did.

Q. Did you meet Mrs. Mapes in Sacramento, California, some [360] time during the months of August or September, 1945?

A. Not 1945—yes, 1945, that is right. I did. I met Mrs. Mapes in Sacramento.

Q. How was that appointment made?

A. It was arranged with the insurance company—

Q. I mean how did you arrange with Mrs. Mapes to meet her in Sacramento?

A. I telephoned her and asked her if she could meet me there.

Q. And do you remember about when she did meet you there?

A. It was around August, 1945.

Q. Did you tell her why you wanted her to meet you there? A. Yes.

Q. What did you tell her?

(Testimony of T. P. Moorehead.)

A. I told her in connection with the loan.

Q. In connection with the loan?

A. In connection with the loan for the hotel.

Q. Did you ever hear Mrs. Mapes and Mr. Denson discuss between themselves the question of a loan on the hotel?      A. Yes.

Q. And when, if you recall, did that discussion take place?

A. I think it was in September. It was after we were in Sacramento.

Q. After you were in Sacramento?

A. Yes.

Q. What did you and Mrs. Mapes do with respect to the loan [361] when you were in Sacramento, in August you say?

A. We interviewed the loan representative of one of the insurance companies.

Q. Did you get the loan?

A. You couldn't get a loan on something that wasn't definite.

Q. But you didn't get the loan?      A. No.

Q. And you say you heard a discussion after that time between Mrs. Mapes and Mr. Denson concerning a loan on the hotel?

A. Mrs. Mapes and Mr. Denson and I discussed the question of a loan on this hotel, yes.

Q. When did that discussion take place?

A. It was around September, 1945.

Q. Do you remember where it was, Mr. Moorehead?

A. It may have been at that meeting in San

(Testimony of T. P. Moorehead.)

Francisco. It must have been one of the meetings where Mrs. Mapes, Mr. Denson and I were all together and the only times we were together was in San Francisco in August and September of 1945. At one of those meetings we talked about loans.

Q. Do you recall what was said by you and Mrs. Mapes and Mr. Denson upon that occasion?

A. We——

Mr. Cooke: The question is whether you recall it.

A. Do I recall? Slightly, yes.

Q. Well, repeat the conversation as nearly as you remember it. [362]

Mr. Cooke: Objected to as incompetent, irrelevant, and immaterial for the reasons heretofore stated.

The Court: Same ruling. You may answer the question.

A. At the meeting with the Occidental Life Insurance Company in Sacramento Mr. Wright told us that they were interested in placing the loan but that was larger than the Occidental Life Insurance Company could handle but that they could handle it—I mean the California Western States Life Insurance Company at Sacramento, head office in Sacramento. Mr. Wright informed me and Mrs. Mapes that in cooperation with the Occidental Life Insurance Company of Los Angeles that he thought the loan could be placed on the building as contemplated at that time. At our meeting with Mrs. Mapes and Mr. Denson we discussed approaching

(Testimony of T. P. Moorehead.)

the Occidental Life Insurance Company directly and Mr. Denson suggested that as Mr. Gock was a friend of his, he is president and chairman of the board of the Bank of America, who owns the Occidental Life Insurance Company, that possibly the approach better be through Mr. Gock and that is what we discussed in regard to a loan on this building.

Q. Do you recall what conclusion was reached by you and Mrs. Mapes and Mr. Denson with respect to Mr. Denson conferring with Mr. Gock?

A. That Mr. Denson would confer with Mr. Gock.

Q. That was your general conclusion? [363]

A. That was the conclusion, yes.

Q. Well, did either Mr. Denson or Mrs. Mapes inform you as to whether Mr. Denson did confer with Mr. Gock?

A. Mr. Denson informed me that he had conferred with Mr. Gock?

Q. When did he tell you that?

A. In Los Angeles.

Q. Do you remember what else he said?

A. That Mr. Gock had telephoned the president of the Occidental.

Q. Mr. Clark?

A. Mr. Gock informed Mr. Clark that Mr. Denson and I would come over and see Mr. Clark.

Q. Did you go over and see him?

A. We did.

Q. About when was that?

(Testimony of T. P. Moorehead.)

A. September, 1945, early September, I would say, because it was before Mr. Denson had made his contract with Mrs. Mapes.

Q. What was said by Mr. Denson and you and Mr. Clark upon that meeting in September, as nearly as you remember?

Mr. Cooke: The same objection, incompetent, irrelevant and immaterial, as to negotiations and matters prior to the signing of the document. Same objection.

The Court: Same ruling. You may answer the question.

A. We discussed the cost and the loan required. Mr. Clark [364] said he couldn't tell us whether he could make a loan or not but that he would send a representative of the Occidental Life, Mr. Brougher, to Reno to investigate it.

Q. Did any one mention to Mr. Clark the amount of the loan required?      A. Yes.

Q. Who mentioned that?

A. Either I or Mr. Denson.

Q. Either you or Mr. Denson?

A. I think I told him how much we required at that time.

Q. How much did you say?

A. Six Hundred Fifty Thousand.

Q. Well, did Mr. Denson ever talk to you again as to whether the loan would be granted?

A. Not as to whether the loan would be granted, no, Mr. Denson never spoke to me about it.

(Testimony of T. P. Moorehead.)

Q. Did you ever have any discussion with Mr. Denson again concerning the loan?

A. Yes.

Q. When was that?

A. After I had seen the Occidental Life Insurance Company a couple of times.

Q. And what did the Occidental Life Insurance Company, through their proper representative, tell you?

A. They told me that they would be interested in making a [365] loan here of six hundred thousand dollars.

Q. Did you communicate that to Mrs. Mapes?

A. Yes.

Q. Did you tell Mrs. Mapes about your and Mr. Denson's interview with the representative of the Occidental Life?

A. I told Mrs. Mapes of my dealing with Mr. Clark. Mr. Denson and I, so far as I remember, had one interview with Mr. Clark.

Q. But you communicated the conclusion of the Occidental Life to Mrs. Mapes? A. I did.

Q. As I understand it, you said that they agreed to grant a loan of six hundred thousand dollars?

A. Not to the amount we asked.

Q. What was it?

A. We were asking six hundred fifty thousand and they said they would only grant six hundred thousand.

The Court: I would like to clear something in my mind. You spoke of their being interested in a



(Testimony of T. P. Moorehead.)

loan of six hundred thousand. Mr. Platt's question contemplated that they had agreed to the loan.

Mr. Platt: Well, they agreed to grant it to the extent of six hundred thousand.

A. No, they said they were interested in a loan of the amount [366] of six hundred thousand. They would have to make a thorough investigation before they would make a loan.

Q. Did you later interview the Occidental after they made that statement?

A. No. I say no—I will modify that. I say no—until the progress of the building plans had been amplified and extended, perhaps six months later, that I told them then what our requirements were.

Q. My attention, Mr. Moorehead, has just been called to a document, a copy of which I believe was prepared by you. Can you identify it as having been prepared by you?

A. Yes, that was prepared by me.

Q. Well, in order to lay the foundation for the identification, it is your own financial estimate for building the hotel?

A. I made that up as a financial plan for the construction of the hotel building, the financing and construction of the building.

Q. I call your attention—I think, if the Court please, we will offer it in evidence. Strike the last question. If the Court please, I will withdraw the offer of introduction. There is one question I would like to ask about it.

(Testimony of T. P. Moorehead.)

Q. I call your attention, Mr. Moorehead, to Statement of Finances. In order to refresh your recollection, isn't it true that the extent of the loan desired was a 625 thousand instead of 650 thousand?

A. No, I think we submitted 650 thousand because I think we raised the cost of the building from 860 to 885 thousand. Whether there was a subsequent statement submitted to the Occidental Life, I would have to look in my own files to see, but this was a statement I made to Mrs. Mapes, showing just what the cost, earnings, expenses and net income would be on the building. My recollection is that we asked 650 thousand dollars from the Occidental Life. We prepared several of these statements from time to time as additions and deductions, mostly additions, were made to the building.

Q. When you applied for the loan to the Occidental Life Insurance Company, to their representative, did you submit any plans?

A. We submitted sketch plans, sketches, preliminary plans; in other words. not detailed drawings.

Q. I hand you five sheets of blueprints and ask you if those are the plans you submitted?

A. I think they were.

Q. Did you ever have a phone conversation with Mrs. Mapes wherein, in substance, she inquired of you why Mr. Denson had not gotten in touch with Mr. Gock?

(Testimony of T. P. Moorehead.)

A. I don't recall any such phone conversation.

Q. Do you recall any conversation with Mr. Denson, wherein he stated that he couldn't begin negotiations for a loan until he had his contract with Mrs. Mapes? [368]

A. I don't recall any such conversation.

Q. You don't recall any such conversation?

A. No, no such conversation.

Q. Isn't it a fact, Mr. Moorehead, that he did tell you that he would approach Mr. Gock and attempt to get the loan and negotiate it after he received his contract from Mrs. Mapes?

A. I don't recall him telling me that.

Q. Subsequent to October 4, 1945, when this contract was executed, did you meet Mr. Denson in Visalia, California?

A. Yes, I met him in December of 1945 in Visalia.

Q. And about when in December?

A. About two days before Christmas.

Q. How did you happen to meet him there at that time?

A. I was on my way to Los Angeles and stopped to show Mr. Denson my progress we had made with our working drawings.

Q. And what did you show him as to the progress you had made? A. I showed him the plans.

Q. The plans that had been——

A. (Interrupting) Floor plans.

Q. Floor plans of the hotel that had been drawn and agreed upon up to that time? A. Yes.

(Testimony of T. P. Moorehead.)

Q. Did you do that voluntarily or was it at Mr. Denson's suggestion?

A. It was voluntarily. I was going down to Los Angeles and [369] stopped there on my way down.

Q. Do you recall about how much time you spent with Mr. Denson at that time?

A. Oh, I got into Visalia about 7:30 o'clock; I should say from about 8:30 until about 11—2½ hours.

Q. And for 2½ hours you discussed the plans that were in your possession?

A. The plans and other matters too. Most of the time on plans, yes.

Q. Do you recall at that time and at that interview whether Mr. Denson made any further suggestions as to modifications or changes in the plans?

A. The change I have already told you about, about omitting one room on the river and one room on Virginia Street.

Q. And did you communicate that suggestion to Mrs. Mapes?      A. I did.

Q. And was it approved, adopted?

A. I have already answered that question.

Q. Well, I am sorry.

A. She said, "Of course I want the room larger."

Q. During the month of December, or to be a little more nearly exact, on or about the 28th day of December, 1945, did you have a meeting at which Charles W. Mapes, Mr. Denson, and others were present?

(Testimony of T. P. Moorehead.)

A. After Mr. Denson made this suggestion to make these rooms [370] larger, we had a meeting in my office. Just what the date was I can't tell you. It was within a couple of weeks after I was in Visalia.

Q. Do you remember whether it was before or after Christmas?

A. It was after Christmas, yes, because I was in Visalia three days before Christmas. Just the exact date I couldn't tell you because we had to develop plans after Mrs. Mapes had told me to diminish the number of rooms and make them larger, we had to revise our plans and I wanted to discuss those plans as revised with Charles and Mr. Denson.

Q. And do you recall who arranged that meeting in your office in Oakland?

A. I initiated it.

Q. You did?           A. I initiated it.

Q. And how did you inform Charles W. Mapes, Jr., and Mr. Denson about the meeting?

A. Probably by telephone.

Q. Do you recall who, if any one else, was present, Mr. Moorehead, beside you and Charles W. Mapes and Mr. Denson, at that meeting?

A. Mr. Slocum I think was present.

Q. The architect?

A. Yes, Mr. Slocum was associated with me in making these plans. From time to time I called our different draftsmen in, [371] Mr. Day, I think,

(Testimony of T. P. Moorehead.)

but I don't recall definitely whether he came in on any of the discussions or not.

Q. Do you remember about what time of the day that discussion started?

A. No, I don't. Probably in the morning, probably about ten o'clock.

Q. Do you remember how long it continued or lasted?

A. Most of the morning.

Q. Do you remember whether Mr. Denson made any additional suggestions to the plans which you submitted upon that occasion?

A. At that time I do not think so. I do not remember if he did but I do not think there were any additions made besides incorporated in the plans.

Q. Did the defendant, Mr. Charles W. Mapes, Jr., participate in the conversation?

A. He did.

Q. I don't suppose you recall anything he said?

A. No, we were in agreement.

Q. All in agreement?

A. Pretty well in agreement as to what was to be done.

Q. By that you mean all the parties present?

A. I mean Mr. Denson, Charles and myself and Mr. Slocum.

Q. Upon that occasion was there any statement made by Mr. Denson to the effect that he was working with certain firms [372] for the purpose of



(Testimony of T. P. Moorehead.)

supplying furniture and fixtures, etc., for the hotel?

A. I don't recall.

Q. You don't recall?

A. I don't recall. The plans were not finished at that time. It was a little bit premature to take things up in any detail with the furniture establishments.

Q. So your answer is you just haven't any recollection?

A. I have no recollection of making that observation, no.

Q. Well after these plans were agreed upon, did Mr. Denson inform you that he was working with certain California firms for supplying furniture and equipment? A. He did.

Q. And when did those conversations take place?

A. He asked me for some plans so that he could give them to the furniture establishments.

Q. Did he tell you the names of any of the firms?

A. Yes.

Q. What were they?

A. He mentioned the name of W. J. Sloane, Barker Bros., Mangrum, Holbrook & Elkus, Dohrmann Hotel Supply Company.

Q. Did you comply with his request and give him the plans? A. I gave him the plans.

Q. It has been suggested that I ask you how soon after the agreement of October 4th was signed was it that Mr. Denson [373] first discussed preparing for the furniture and fixtures?

A. Mr. Denson mentioned to me some time dur-

(Testimony of T. P. Moorehead.)

ing the period from the time I gave him the plans and October 4th that he would like the plans to give to these furniture establishments.

Q. Now was that before the contract was signed?

A. It was between October 4th when the contract was signed——

Q. Yes.

A. ——and January when I gave him the plans. He mentioned he would like plans to give to these people so he could get his furniture lined up.

Q. Did you ever have any discussion or conversation with Mr. Denson with respect to furnishings and fixtures, etc., in the presence of Charles W. Mapes or Mrs. Mapes?

A. In the presence of Charles, yes.

Q. And when did that happen?

A. I couldn't tell you exactly whether it was after I gave Mr. Denson the plans or before, probably before, because I would not have given the plans to Mr. Denson without being permitted to.

Q. And from whom did you require permission?

A. Probably Charles. Probably up here, when I came up here during December or January I mentioned the plans were required by Mr. Denson.

Q. Please state, Mr. Moorehead, whether on or about the first day of April, 1946, there was another meeting in your office [374] at Oakland with persons interested in the hotel project?      A. Yes.

Q. And do you know the exact date of that meeting?

(Testimony of T. P. Moorehead.)

A. From memory I do not, only from what they said here, but it was about April 1st, 1946.

Q. This year? A. This year, that's right.

Q. Do you remember who were present at that conference?

A. Charles, Mr. Denson, Mr. Slocum, Miss Mason of Barker Bros. and myself. I do not think of any other representative of Barker Bros beside Miss Mason.

Q. Do you know how that meeting was arranged; I mean, of your own knowledge do you know? How did they happen to meet in your office?

A. Well, Mr. Denson told me that he was bringing Miss Mason to San Francisco and that he was asking Charles to be present.

Q. Do you recall about what time in the morning they all met?

A. About ten o'clock I think.

Q. What was done generally at that meeting, without going into too much detail?

A. We looked at the plans.

Q. You mean the plans of the hotel?

A. I mean the plans that Miss Mason had brought and Mr. Slocum and I both decided that they were not anything that we wanted, so far as the hotel—the suggestions they made were not [375] proper at all and we told Miss Mason and we told Mr. Denson that we were developing the coffee shop and the sky room and that we would lay out the coffee shop and sky room and when we had them laid out would ask them to figure on it, but

(Testimony of T. P. Moorehead.)

we were not interested in the lay-out of the coffee shop Miss Mason made.

Q. How about the rest of the hotel?

A. The rest of the hotel, the kitchen, we looked at the plans of their kitchens. The style of the kitchen, I remember, was absolutely inappropriate. The first floor kitchen had some merit to it but we didn't want the plans because we were not in a position to either approve or disapprove them at that particular time.

Q. Well these plans that were submitted by Miss Mason of Barker Bros. were quite detailed plans, weren't they?

A. No. They were just lay-outs somewhat along the order of those sketches which we had made.

Q. Well, without taking up the time of the Court, Mr. Moorehead, you were present, weren't you, when we introduced in evidence the plans submitted?

A. I saw them from a distance, I didn't examine them, but I presume they were the same plans. They were quite extensive.

Q. They were quite extensive?

Q. Quite extensive plans of the rooms and how the furniture would be laid out, plans of the coffee shop, how the coffee [376] shop would be laid out.

Q. And Charles Mapes, along with the rest of you, discussed those plans?

A. We discussed those plans. We wasted our time there.

Mr. Platt: That is conclusion, your Honor.

(Testimony of T. P. Moorehead.)

Q. All I want to know is whether you participated in the discussion? A. I participated.

Q. And whether Charles W. Mapes participated in the discussion? A. Yes.

Q. And whether Mr. Denson, the plaintiff, did?

A. Yes.

Q. State whether or not you made any commitment to Mr. Denson at any time when your final plans were finished that you would submit them to him?

A. I was not required to submit the final plans to Mr. Denson. I submitted the final plans to Mrs. Mapes.

Q. Well, it was your understanding, wasn't it, and it had been your custom, hadn't it, to submit plans to Mr. Denson, copies of them, to get his reaction and view?

A. I discussed the plans with Mr. Denson, yes, in December.

Q. And that continued until you were subsequently prevented from doing it?

A. That is right. [377]

Q. Do you recall any statement made by the defendant, Charles W. Mapes, with respect to the sky room at this conference you said was held in your office in Oakland on or about April 1st, 1946?

A. I do not recall any particular statement by him. We discussed the lay-out—what date, December did you say?

Q. About April 1, 1946.

A. We discussed the lay-out that Barker Bros.

(Testimony of T. P. Moorehead.)

had submitted. Just what Charles said in connection with it, I don't recall any particular thing that he said. In fact, I told Charles it was not what we wanted, wasn't anything near what we wanted.

Q. Well, isn't it a fact that Charles W. Mapes said in effect that he didn't want to decide anything with respect to the sky room?

A. I don't recall Charles saying that at that time.

Q. Well, do you recall his having made that statement any other time?

A. Charles had all his business in consultation with his mother. If he made a statement at any time that he did not want to decide, it would be because he wanted to take it up with Mrs. Mapes before making a decision.

Q. Do you recall that Charles W. Mapes said to you at any time that he didn't want to make any final decision with reference to the furnishing of the sky room or the equipment of it?

A. No, I don't recall Charles making that statement. [378]

Q. After this discussion in your office on April 1, 1946, when did you next see Mr. Denson?

A. I think it was some time during April.

Q. Where did you see him?

A. I think at the Sir Francis Drake Hotel in San Francisco.

Q. And what was said at that interview or meeting?



(Testimony of T. P. Moorehead.)

Mr. Cooke: Objected to as hearsay, irrelevant and immaterial.

Mr. Platt: Well, of course, with respect to the hotel operations, your Honor.

The Court: Objection will be overruled. Answer the question.

A. He told me that he and Charles were not going in on the lease, that Charles refused to enter into an agreement with him.

Q. Did he make any request at that time for you to furnish him with any additional plans?

A. Yes.

Q. What did he say?

A. He asked that we give him additional plans as they now had been developed.

Q. And you say that was some time early in April of 1946?

A. Some time in April, I should say.

Q. When he asked you for those additional plans, what did you reply? [379]

A. I told him I couldn't give him any.

Q. Did you tell him why you couldn't give him any?

A. Yes, I did.

Q. Well, what did you say?

A. I told him Mrs. Mapes and Charles had requested me not to give any more plans to Mr. Denson.

Q. Did you tell him anything else?

A. I do not think so.

Q. As a matter of fact, did you come to Reno early in April, Mr. Moorehead?

(Testimony of T. P. Moorehead.)

A. Sure I did. I have been in Reno two or three times every month since that hotel was started.

Q. Who accompanied you to Reno?

A. In April?

Q. Yes, early in April of 1946?

A. I don't recall anybody accompanying me except possibly my wife.

Q. Well, did you see Mrs. Mapes and Charles when you came to Reno upon that occasion?

A. Yes.

Q. Did you also meet Mr. Denson afterwards?

A. I don't recall meeting Mr. Denson after April 1st in Reno.

Q. Did you see Mr. Denson after that in San Francisco?      A. Yes.

Q. And about when was that? [380]

A. I already told you I recall seeing Mr. Denson some time in April of 1946. Whether it was after that or before that I couldn't tell you.

Q. Did you tell him then that you had had a conversation with Mrs. Mapes and Charles W. Mapes, Jr.?      A. Yes.

Q. Did you tell him what they said to you?

A. No.

Q. Well, didn't you tell him what the conversation was between you and Mr. and Mrs. Mapes?

A. No, I came to Reno to discuss the construction of this building among other matters.

Q. You saw Mr. Denson, didn't you, in San Francisco or in Oakland I should say, some time in June, 1946?

(Testimony of T. P. Moorehead.)

A. I have seen Mr. Denson perhaps half a dozen times since April, 1946. I can't recall the exact dates.

Q. Well, do you recall having met him in your office in June, 1946?

A. I can't say in June, Mr. Denson has been in my office about twice or three times since April, 1946.

Q. Well, in order to refresh your recollection, you had information, didn't you, that a suit had been brought against Mr. Denson by Mrs. Charles W. Mapes and others? A. Yes.

Q. And did you or did you not make an arrangement with anybody [381] so that Mr. Denson would appear at your office and be served with process in that action? A. I did not.

Q. But you knew that Mr. Denson was to be present in your office some time in June, 1946?

A. Yes, because I told Mr. Denson over the phone, I said I would like to see him. I also told Mr. Denson that Charles was coming over.

Q. That was in June, 1946?

A. It was at the time that this process was served on Mr. Denson. Is that in June?

Q. Well, did you phone Mr. Denson and ask him to come to your office on that occasion?

A. Mr. Denson wanted to discuss things with me and I wanted to discuss with Mr. Denson because Mr. Denson thought I was opposed to him.

Q. I am trying to find out if I can, Mr. Moorehead—you can answer either yes or no—did you

(Testimony of T. P. Moorehead.)

phone Mr. Denson and arrange to see him at your office?      A. I did.

Q. The latter part of June, 1946?

A. I don't know. When was this suit instigated?

Q. The latter part of June, 1946.

A. Well, then, it was at that time that I saw Mr. Denson, that I phoned Mr. Denson. [382]

Q. Isn't it a fact that Mr. Denson was served with process while he was in your office?

A. No.

Q. Well, did you have any knowledge that he was served?

A. Yes, because after he left my office he came into the office and thanked me for being served.

Q. Thanked you for being served?

A. That's right, and he walked out.

Q. Didn't you feel that that was a little bit of sarcasm?

A. Yes, I did. He didn't take the time to explain but I wasn't responsible for his being served.

Q. Do you know how it happened that the process server knew that Mr. Denson was to be in your office at that time?

A. Unless Charles had given him information that he would be there.

Q. Do you know where Charles got that information?

A. Charles got that information from me.

Q. And what did you tell Charles?

A. In the morning I told Charles Mr. Denson was coming into my office that afternoon.

(Testimony of T. P. Moorehead.)

Q. And do you know whether Mr. Denson was served with process in the morning or in the afternoon?

A. I think it was in the afternoon.

Q. Do you know if he was served with process after you told Charles or before? [383]

A. It was after I told Charles.

Mr. Platt: If the Court please, I think that is all for the present.

The Court: Cross-examination, gentlemen?

Cross-Examination

By Mr. Cooke:

Q. Mr. Moorehead, your connection with the construction of the Mapes Hotel, so far as actual work is concerned, began when?

A. November 13, 1946. 1945 we had our superintendent——

Q. (Interrupting): And what did that work consist of, the first work that you did?

A. Putting the protection work around the property and starting in the demolition of the building.

Q. That was included in your job, in your contract with the Mapes Company? A. Yes.

Q. The demolition of the building was the old postoffice building, known as the old postoffice building? A. Yes.

Q. A brick building? A. Yes.

Q. How long did it take to demolish that and

(Testimony of T. P. Moorehead.)

get it out of the way?      A. About a month.

Q. How soon after you began the work of demolition on the old building did you see Mr. Denson or talk to him about what was going on up here in Reno?

A. I do not believe I saw Mr. Denson until December 22nd or 23rd.

Q. State, if you know, whether Mr. Denson knew from anything that you said to him or otherwise that the work had been commenced on the demolition?

A. Well, Mr. Denson knew that demolition had been commenced.

Q. How did he know?

A. Well, one thing I think Charles had written him and I may have talked with him——

Mr. Platt: I ask that that part of the answer be stricken, "Charles had written him."

Mr. Cooke: No objection.

Q. Did you have any conversation with Mr. Denson in regard to the work having been started or being under way or the like?

A. I probably did by telephone or by personal conversation.

Q. What I want to find out is your recollection, or best recollection, whether you did or you didn't?

A. I don't recall.

Q. How soon after you began the work of demolition do you recall having a conversation with Mr. Denson about the work?

A. December 22nd and 23rd.



(Testimony of T. P. Moorehead.)

Q. And where was the conversation? [385]

A. That was in Visalia.

Q. You already told us about the visit?

A. I already told you.

Q. You stopped off there 2½ hours you said, I believe?

A. Yes.

Q. And on that occasion I believe you said you spent a portion of the time discussing some plans you had?

A. That is right.

Q. And those plans were of what?

A. This building here.

Q. What do they show?

A. They show all the floors, the floor plans.

Q. Those floor plans, how long had they been prepared?

A. They were in the process of being prepared at that time. They were not completed, but they were in the process of preparation and quite a lot done on them.

Q. On this visit to Visalia was the matter of the work on the building discussed?

A. We talked about it, how we were getting along.

Q. Do you remember what was said as to what you were doing or what your company was doing?

A. I told Mr. Denson that the demolition was probably completed at that time, December 23rd, and that the excavation was in progress and that we soon expected to start putting in the foundations.

Q. The taking down of the walls of the old post-

(Testimony of T. P. Moorehead.)

office building only took a portion of those 30 days you mentioned?      A. Yes.

Q. The balance was excavating for the foundation?

A. No, the excavation for the basement was started before the walls were all taken down. We started excavation about the middle of December.

Q. Well, did you state to Mr. Denson the substance of what you have just told us about the progress of the work?

A. I did. I told Mr. Denson when I was in Visalia what progress we had made, yes.

Q. Your connection with the whole business there was construction engineer, wasn't it?

A. Well, our business is that of manager and designing and construction of the building. We contract and design the plans and the construction of the building.

Q. That was your contract with the Mapes Company in connection with this building?

A. Yes.

Q. And you spend about how many days, we will say, per month from the time you began down to the present time in Reno on this job?

A. On this job, oh, fully one-third of the working days I have been in Reno since we started this building.

Q. I didn't quite get that. [387]

A. Fully one-third of the period between last November, 1946, and today I have been in Reno.

(Testimony of T. P. Moorehead.)

Nearly 300 working days—I have been here perhaps 100 working days altogether.

Q. Does the time that you put in here in Reno, during this time that you are here that you described, does that apply to all the work you have to do in connection with the job of constructing that building?

A. Oh, no. When I am in Oakland I am engaged on construction of this building.

Q. What work do you do in Oakland two or three hundred miles away by way of constructing a building in Reno?

A. We prepare plans, we arrange for the purchasing of materials, always takes a lot of time, we also expedite to see that things are coming through.

Q. How about hiring of men? Do you have anything to do with that down there?

A. Some of the men employed have been employed here, some in Oakland.

Q. Is the matter of obtaining materials of considerable difficulty or not?

A. Yes, it is difficult.

Q. You handle that largely from your Oakland office, do you?

A. No, I would say equally between the Oakland office and here.

Q. And who have you on the job to superintend, etc., while [388] you are not here?

A. Well, the superintendent on the building is Mr. Huck.

(Testimony of T. P. Moorehead.)

Q. He has been on there from the beginning?

A. He has been there from the beginning.

Q. He is there now?

A. Yes. We have other men too.

Q. When, if you recall, did you have the first conversation with Mr. Denson about his interests as prospective lessee or otherwise in the building?

A. That would be when I first met Mr. Denson in Los Angeles in 1944, May or June, 1944.

Q. Well, I should ask my question a little differently. When, after September 24, 1945, did you have your first conversation with Mr. Denson in regard to the building and discussion with him as to plans or the like?

A. I don't recall the date, Mr. Cooke. I saw Mr. Denson most of the time that he came to Los Angeles from Visalia on matters. He would call me up and I talked with him about project.

Q. Did he ever tell you along in September, October, or November, 1945, that he had a contract with Mrs. Mapes?      A. Yes, he did.

Q. When did you first hear of that from him?

A. He showed it to me in Los Angeles in October, the latter part of September or October, 1945.

Q. And do you remember what discussion was had in regard to the document?

A. He asked me to read it over and I read it over and I made the observation that he was guaranteeing the income from the building without the stores and he said that observation had also been made by some one else, that some one else had also

(Testimony of T. P. Moorehead.)

made that observation and he was going to have it corrected.

Q. Was there anything else discussed or mentioned by him or by you with regard to the September 24th agreement?

A. I don't recall any other particular items, no. I only just read it over, I didn't study it, went through it and I asked Mr. Denson if that was his intention and he said it was.

Q. Did you have any discussions with him before this as to his obtaining a lease on the hotel without the stores or with them?

A. Any discussions I had were always without the stores.

Q. His lease or whatever he got was to be without the stores?

A. Without the stores, yes, as far as I had any talk.

Q. The discussion that came up at this time was not with respect to the stores being excluded, but with regard to their being included for the purpose of figuring his guaranteed minimum, is that right?

A. That is right.

Q. You called that to his attention? [390]

A. I called that to his attention.

Q. Just what did you say?

A. He said that was his intention too, that the income from the stores was to be included in the guaranteed income.

Q. Was anything said as to how the matter of

(Testimony of T. P. Moorehead.)

the income from the stores that were not included in the lease was to be controlled or handled?

A. No.

Q. Was the matter of this particular document discussed in any other respect, any of the other clauses of it at that time I mean?

A. We may have talked about one or two of the other clauses, but I don't recall what they were.

Q. Did he express any dissatisfaction or satisfaction with the paper in general?

A. No, that was the only item I recall that was under question.

Q. How did he say he was going about to correct that?

A. That he would make the correction and get in touch with Mrs. Mapes.

Q. Do you know whether he did or not?

A. Yes, he did.

Q. How do you know?

A. Well, the fact that the document was subsequently signed by all of them. Also I knew before because he had told me and Mrs. Mapes had told me.

Q. How soon after this October 4th was it that you saw the [391] document that you recall?

A. I don't think I ever saw the document again after October 4th until this last week.

Q. Do you remember how that particular clause was changed? Did you learn anything about that before it came into court here, how that clause was changed?

A. No, I never knew how it was changed.



(Testimony of T. P. Moorehead.)

Q. Did you ever receive any instructions from Mrs. Mapes or Charles W. Mapes, Jr., to discuss and obtain the approval of Mr. Denson to the maps and drawings and details, etc., as the construction work went along?

A. I never received any instructions from them.

Q. In what way then did it come about that you did discuss with Mr. Denson the plans and drawings, etc., as you have already detailed?

A. Mr. Denson had this agreement with Mrs. Mapes that provided that the agreement would be made and that he would operate the hotel and I didn't want to go too far with our plans without knowing just what Mr. Denson's actual connection with it was.

Q. Then so far as your taking up with Mr. Denson was concerned, that was prompted by your knowledge of this agreement?

A. By my knowledge of this agreement and by my interest in getting plans completed as quickly as possible and not doing a lot of work which might have to be changed. [392]

Q. Did Mr. Denson ever explain to you that he was entitled to receive plans and drawings, etc.?

A. I don't recall that he did, but it is our practice to submit plans to lessees.

Q. When, if you recall, was the first time that you discussed with Mr. Denson the subject matter of plans or drawings for the proposed hotel building? Is that this December meeting at Visalia?

A. Will you repeat that again?

(Testimony of T. P. Moorehead.)

Q. I think I want to change it, with your Honor's permission. When after September 24, 1945, did you first discuss with Mr. Denson the subject matter of plans and specifications, details and drawings of this hotel?

A. I can't remember any specific date but I did see Mr. Denson in Los Angeles between September 24th and the time my own contract with Mrs. Mapes was signed.

Q. What date was that?

A. November 6, 1945.

Q. You saw Mr. Denson in Los Angeles?

A. Saw Mr. Denson in Los Angeles. It may have been in October.

Q. Did you discuss with him the matter of plans and drawings, and the like? A. Yes, I did.

Q. Did you have any with you?

A. Yes, I had plans with me. [393]

Q. Who else besides you and Mr. Denson were present or participated in that talk?

A. I don't recall anybody else.

Q. Where did it occur?

A. In Mr. Denson's room at the Biltmore Hotel.

Q. Did you go down there specifically to see him?

A. I was living in Los Angeles at that time.

Q. What were the plans that you discussed at that time? What were the drawings or plans?

A. They were sketch plans, similar to these.

Q. What do you mean "these"?

(Testimony of T. P. Moorehead.)

A. I mean these plans that Mr. Platt just showed me. They were sketch plans. Between September 26th and November 6th we only made preliminary plans.

Q. They were prepared by you or under your supervision?

A. My supervision and cooperation of Mr. Slocum.

Q. They were not complete in any sense?

A. Not working drawings in the usual sense.

Q. Did you have any other business to take up with Mr. Denson about the size of these plans at that time? This meeting was merely for the purpose of discussing plans?

A. In October I had no contract with Mrs. Mapes. I was trying to secure a contract with Mrs. Mapes and I was discussing these with Mr. Denson with the idea of persuading Mrs. Mapes to enter into a contract with us. [394]

Q. You were trying to qualify yourself?

A. I wanted the job.

Q. That would be before November 10th?

A. Before November 6th, the date of my contract.

Q. Well, what did Mr. Denson have to say in regard to the plans that you had prepared at that time, as regards it being satisfactory or not? Did he criticize them or not?

A. Those plans he made no particular criticism about because we had previously discussed the

(Testimony of T. P. Moorehead.)

plans, which I had shown Mr. Denson from time to time.

Q. You had previous discussions? .

A. Prior to September 26th.

Q. Prior to September 24, 1945? A. Yes.

Q. Those conversations were conditioned on the part of both of you that you might get some interest in this hotel building? A. That is right.

Q. He getting some arrangement for a lease and you getting the job of putting the building up?

A. That is right.

Q. And you had discussed in sort of a tentative way the plans? A. That is right.

Mr. Sinai: Might I interpose an objection on the ground that counsel's statement is not in conformity with the [395] testimony given by the witness because counsel is referring to a period prior to September 24th and the witness testified it was from September 24th on through October and November, which is when he obtained——

The Court (interrupting): The answer of Mr. Moorehead went back to prior to September 24th?

Mr. Sinai: That is right, and counsel is now limiting it to September 24th.

(Question and answer read.)

Mr. Cooke: Do you understand now what I am asking? Let me ask you again and get this record clear. I am now asking about after September 24, 1945, and prior to the time you got your contract on November 6th. Had you had any discussions

(Testimony of T. P. Moorehead.)

with Mr. Denson in regard to plans, had you ever discussed them in any way with him?

A. Yes, I know I did because I saw Mr. Denson in the Biltmore Hotel when he had this agreement, he received this agreement.

Q. That was October 4th?

A. That was October 4th, according to your own records. I discussed plans with Mr. Denson at that time.

Q. Now coming down to the meeting which you said you had December 23rd in Visalia?

A. Yes,

Q. And you told us that you spent 21½ hours there, I think?

A. I spent 21½ hours there. [396]

Q. Did you arrange to meet him there especially for the purpose of discussing these plans with him, or was that on your way over?

A. I telephoned him that I was coming with the plans.

Q. Did you have any other business in that section of the country?

A. I was going down to Los Angeles. My home at that time was still in Los Angeles.

Q. You were on your way from where to where when you stopped in Visalia?

A. From Oakland to Los Angeles.

Q. So the Visalia visit wasn't especially arranged to see him, just simply a matter of your stopping off there, is that right or not?

(Testimony of T. P. Moorehead.)

A. Well, I thought it was important to see Mr. Denson in connection with the plans as far as we had gone.

Q. Up to that time you had not received any instructions from Mrs. Mapes or Charles W. Mapes to take up the matter of——

A. (Interrupting): I had no specific instructions from Mrs. Mapes or Charles to take up with Mr. Denson.

Q. Did you ever have any instructions subsequent to the Visalia meeting to submit plans, drawings and specifications to Mr. Denson for his approval?

A. I never had any specific instructions to submit plans, drawings or specifications to Mr. Denson?

Q. Insofar as you did submit any, that was done by reason of your knowledge that he had this agreement of September 24, 1945?

A. That is correct. It was natural for him to know what was going on.

Q. When next, after the December 23rd meeting at Visalia, did you meet with Mr. Denson in regard to the plans or drawings, or in regard to anything about the hotel building?

A. It was within a couple of weeks, in my own office, and Charles was there at that meeting and testimony has been it was on the 28th of December. I don't recall the exact date.

Q. Your mind is refreshed to some extent by what you have heard here as to dates, is that right?

A. That is right.



(Testimony of T. P. Moorehead.)

Q. Did Mr. Denson ever come up here and look things over in connection with the construction work in any way or show any interest in it?

A. I think Mr. Denson may have been up here once while we had the building under construction.

Q. Do you remember the occasion about when that occurred?           A. I do not.

Q. What makes you think he was here?

A. I just seem to remember that he was here once. Whether he was or wasn't, I don't recall.

Q. What his visit amounted to, he didn't tell you? [398]

Q. Did he ever report to you why he was, or did you learn why he was here?

A. He probably did. I wouldn't say he did.

Q. You don't remember much about it at all?

A. No.

Q. It may be he wasn't here, as far as you are concerned?

A. As far as I am concerned, he may have been.

Q. You are not sure?

A. I can't be sure.

Q. Insofar as you have any remembrance about his being here, about when you would say his visit occurred?

A. I really couldn't say, Mr. Cooke, whether it was after April or whether it was before April. It was probably before. I recall a vague recollection that he was there.

(Testimony of T. P. Moorehead.)

Q. The next meeting you started to tell us about a while ago was December 28th, I think you said?

A. Yes.

Q. That was held where?

A. In my office.

Q. Who were present on that occasion?

A. Mr. Denson, Mr. Slocum, Charles and myself.

Q. What was the occasion of your getting together? What was the reason for the meeting?

A. To go over the plans as we had them developed at that time, which had incorporated some changes requested by Mrs. Mapes. [399]

Q. At whose suggestion was that meeting held?

A. My own. I wanted to get the plans finished as quickly as possible.

Q. How long a time was spent by the parties there together considering the plans and so on?

A. At least two hours, probably longer.

Q. What room did you say that was in?

A. In my office.

Q. In Oakland?

A. In Oakland, yes.

Q. And was the entire two hours consumed in discussion and consideration of the plans and drawings? A. Yes, sir.

Q. You had a number of drawings, I suppose, to submit to the persons present? A. Yes, sir.

Q. And you spread them out and they went over them?

A. One by one. There were various questions.

Q. Were there any suggestions made by Mr. Den-

(Testimony of T. P. Moorehead.)

son at that time in regard to any changes in the plans?      A. Not at that time that I recall.

Q. Did anybody make any suggestions as to changes or what they wanted as changes?

A. None that I recall because a change had been requested a few days previous. [400]

Q. Who requested a change a few days previous?

A. At my meeting with Mr. Denson in Visalia he requested this change which I took up with Mrs. Mapes, as I already stated. She said, "Of course I want the rooms larger."

Q. That is when the matter of changing——

A. (Interrupting): The room sizes.

Q. ——these rooms would be made larger first came up, is that right?      A. Yes.

Q. And from whom did you first learn from anybody that there was to be that sort of change? Was that from Mr. Denson or Mrs. Mapes?

A. That was Mr. Denson.

Q. And that was at this Visalia meeting?

A. That is right.

Q. And did you then communicate with Mrs. Mapes as to the suggestion of the change in the rooms?      A. Yes.

Q. How did you communicate with her?

A. By telephone from Los Angeles.

Q. You went from Visalia to Los Angeles?

A. Yes.

Q. How soon after your arrival in Los Angeles did you communicate with Mrs. Mapes?

A. The next day. [401]

(Testimony of T. P. Moorehead.)

Q. I think on direct examination you stated something to the effect that she said that was what she wanted all along, or words to that effect, is that right?

A. That is correct.

Mr. Cooke: That is all.

Mr. Platt: May we have an order, your Honor, that witnesses subpoenaed shall be here on the 10th of December?

The Court: Yes; further proceedings in this case will be continued until December 10, 1946, at Reno, at 10:00 o'clock and all witnesses who have been subpoenaed and those here now in attendance will be required to be here at 10:00 o'clock Tuesday, December 10, 1946. [402]

Reno, Nevada, Tuesday, December 10, 1946

10:00 A.M.

Appearances same as at previous session.

Mr. Cooke: We have depositions on file with the clerk, taken according to stipulation. We request they be opened.

Mr. Platt: That is agreeable.

The Court: So ordered. The depositions may be opened, subject to examination of counsel. What is the state of the record?

Mr. Platt: If the Court please, Mr. Moorehead was under cross-examination by Mr. Cooke. I received a letter from Moorehead with a letter from his physician, saying that he was ill with ear trouble and yesterday he phoned me, stating he hoped he

would be excused. Of course, he is our witness. However, we have no objection to excusing him temporarily under the circumstances, with your Honor's consent, but he was under cross-examination by Mr. Cooke. If we can agree on that, I have no objection.

The Court: Mr. Cooke probably desires to cross-examine him further, or were you about through with him?

Mr. Cooke: Mr. Moorehead communicated with me also and I told him to take it up with Mr. Platte, he was the plaintiff's witness, and I suggested the proper way would be [403] to get an affidavit from his physician and forward to Mr. Platt. I don't know whether he did or not, but as I see it, we can probably proceed with some other witness and defer further cross-examination until later in the trial. Maybe he will be well enough to be here.

The Court: It might be well to inform Mr. Moorehead his presence will be required, in view of the statement of Mr. Cooke, so he won't put himself out of reach to be available here. He might think it wouldn't be required and might go away.

Mr. Platt: I would only be disposed, if your Honor please, to consent to temporary absence and to be on call of the Court and counsel when desired.

The Court: In order to avoid any long delay on his account, if Mr. Cooke will some time later inform the Court and counsel when he would like to have Mr. Moorehead here, we will try to get that information to Mr. Moorehead.

Mr. Cooke: Have you an affidavit from him?

Mr. Platt: No, no affidavit. I have a letter from his physician.

Mr. Cooke: I haven't any doubt from what I have heard he is rather seriously indisposed.

The Court: It might be well if counsel would communicate [404] with him. Are you ready to proceed?

Mr. Platt: Yes, your Honor. Call Mr. Slocum.

---

### FRANCIS HARVEY SLOCUM

a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Platt:

Q. What is your full name?

A. Francis Harvey Slocum.

Q. Where do you reside?

A. Oakland, California.

Q. What is your profession or vocation?

A. Architect.

Q. How long have you been so engaged?

A. About thirty years.

Q. Are you acquainted with the parties to this action, namely, the plaintiff, Peter G. Denson, and the defendants, Mrs. Mapes and Charles and Gloria?

A. Yes, I am.

Q. How long have you known Mr. Denson?

A. Well, I have known him for approximately a year and a half.



(Testimony of Francis Harvey Slocum.)

Q. How long have you known the defendants?

A. Just a few months before that.

Q. How did you happen to meet the plaintiff, Mr. Denson, and become acquainted with him?

A. Well, I met him in a hotel meeting that we were having in San Francisco at the Fielding Hotel, I believe it was, when [405] Mrs. Mapes and the rest of the family and Mr. Moorehead were having a meeting and I was called in, too.

Q. Do you remember about when that meeting at the Fielding Hotel occurred?

A. Well, I would say it was in possibly April or May, along in there, of 1945.

Q. Well, it could have been several months later than that, couldn't it, some time in August, 1945?

A. Well, we had another meeting in August. We had two meetings, one at the Sir Francis Drake and one at the Fielding. The one at the Fielding was before that. I believe the one at the Sir Francis Drake was on V-J or V-E day, I don't remember which.

Q. Are you associated with Mr. Moorehead in any capacity?

A. Yes, I am.

Q. In what capacity?

A. Well, I do all the architectural work and any designing, lay-out work of that time. I have been architect for the firm.

Q. For how long a period of time have you been so engaged with Mr. Moorehead?

A. Well, we were engaged about 1930 in prospective work. We didn't do any work then because

(Testimony of Francis Harvey Slocum.)

the depression set in and nothing was done. I have known Mr. Moore about 20 years off and on but we did not become associated together until [406] about 1944, the middle of 1944.

Q. Did you perform any services as an architect for Mr. Moorehead with reference to the construction of the so-called Mapes hotel in Reno, Nevada?

A. Yes, I did.

Q. When did you begin your services in that way?

A. Well, we made preliminary sketches in 1945. Well, it was in the first part of 1945, I would say, we started preliminary sketch drawings on the hotel. It might have been the latter part of '44, but around the first of the year anyway.

Q. Prior to the meeting at the Fielding Hotel in San Francisco, which you state you think was some time in April, 1945, had you ever met Mr. Denson prior to that time, Peter G. Denson?

A. No, never met him before.

Q. The first time you met him was on that particular occasion? A. That's right.

Q. And what was said and done at that meeting at the Fielding Hotel?

A. Well, I made some sketch plans and pictures and elevations and views of the hotel and sent them to Mrs. Mapes and Mr. Denson was there and we were going over the plans with them and that was my purpose in being there, to explain what I had done and why I had done it.

(Testimony of Francis Harvey Slocum.)

Q. Was Mr. Denson present at the entire interview or conference? [407]

A. Yes, he was there.

Q. Did he examine the plans presented by you along with Mrs. Mapes and Charles Mapes?

A. Yes.

Mr. Cooke: If the Court please, we desire to interpose an objection to this testimony and all this type of testimony on the grounds previously stated in similar objections to similar questions. Specifically upon the ground it is irrelevant and immaterial, that it purports to change or vary or supplement the terms of a written document; that there is no evidence or any plea of any oral agreement involved in this case to which there could be any part performance; that admission of the testimony is precluded by the provisions of the Nevada statute; that this occurred prior to the making of the September 24, 1945, agreement, I gather from the question, and whatever was done and whatever was said is merged in the written agreement that is relied upon as a basis if this action by plaintiff and all the previous transactions and talk and verbal arrangements are deemed merged in that, and therefore it is immaterial.

The Court: I am inclined to agree with the principles of law that you stated in your objection, but I can see that the Court is entitled to know what took place between these parties in [408] preparing

(Testimony of Francis Harvey Slocum.)  
to make this contract, so the objection will be over-  
rule. You may have an exception.

(Question read.)

A. Yes.

The Court: If that answer was before your objection, the Court's ruling will be deemed withdrawn and it may be deemed made at the proper time and considered at the proper time.

Q. Do you recall whether at that time any one of the parties present made any suggestions as to modification of any of the plans you submitted?

Mr. Cooke: Same objection.

The Court: Same ruling.

A. Mrs. Mapes—I was trying to sell them the idea of a drive-in-turn-around type of hotel and it causes a lot of differences in levels and Mrs. Mapes did not care for it and she did not want steps and Mr. Denson agreed also as she stated and there was a lot of discussion there and I started then to make some new sketches, eliminating the steps.

Q. Do you recall whether Mrs. Mapes asked Mr. Denson's opinion as to such a matter as you have just testified to?

Mr. Cooke: Same objection. Also leading.

The Court: It might be leading.

Mr. Platt: I think probably it is, your Honor.

Q. Were any suggestions made by Mr. Denson with respect to a modification of the plans submitted?

A. He agreed to try to get the steps out, too.

(Testimony of Francis Harvey Slocum.)

Q. Were there any other suggestions made at that time?      A. Not at that time, no.

Q. How extensive were the plans you submitted then? Did they involve the entire structure?

Mr. Cooke: Same objection to all this.

The Court: So considered and same ruling.

(Question read.)

A. Yes, it did involve the entire structure and we also had introductory sketches showing how this plan would appear and also the drive-in, etc. These were all in colors, so we could show it up.

Q. Do you remember how long the conference took?

A. Well, it took—we came over there, it was on Sunday, at 10:00 o'clock I believe, and lasted all morning and we went to lunch and a couple of hours after that. Three hours maybe.

Q. And without going too much into detail, do you recall generally what was said by each one of the parties present, you, Charles W. Mapes, Mrs. Mapes, Mr. Denson, Mr. Moorehead?

A. Well, there were a lot of pros and cons. Some were for the drive-in with different levels and Mrs. Mapes was definitely against that. She did not want walking up and down stairs, thought they would fall, so finally they all agreed that that [410] would not be in and I took the sketches and withdrew and started some new sketches.

Q. Then, as I understand it, according to your recollection, the entire discussion during the morning and afternoon involved just one step?

(Testimony of Francis Harvey Slocum.)

A. Yes, that was the whole scheme here. The plans of the upper floors wasn't discussed much at that time, because it depended on what we did on the first floor and basement, so we had to determine what to do there that changed everything.

Q. Do you remember anything that Mr. Denson, the plaintiff here, said during that discussion?

A. No, I don't at that time, except that he did finally agree with Mrs. Mapes that we should eliminate the steps and to have the thing level as much as we could, so that was the outcome of the whole thing and we had to do it all over again.

Q. Then when, if at all, did you meet again, at which meeting Mr. P. G. Denson, the plaintiff, and Mr. Moorehead, yourself and Mrs. Mapes or Charles W. Mapes were present?

A. Well, the next meeting was at the Sir Francis Drake Hotel.

Q. Do you remember about when that occurred?

A. That was either V-E or V-J Day. It was one of the two, I don't remember which.

Q. Somewhere around the middle of August?

A. Yes, V-J Day, the 14th of August; but I don't think it was [411] then because I was standing in the City Hall in Oakland when the sirens blew. It must have been V-E Day. Either that or I went there later. We went there in the afternoon in this case, but I remember the whistles blew when I was at the City Hall in Oakland, trying to get a permit for another building, so I couldn't have been over there.



(Testimony of Francis Harvey Slocum.)

Q. Who were present at that meeting?

A. Mrs. Mapes, Charles and Gloria Mapes was there for a while, Mr. Moorehead and myself.

Q. Was Mr. Denson present?

A. Oh, yes, Mr. Denson was present.

Q. Where in the Sir Francis Drake Hotel did that interview take place?

A. Upon the mezzanine floor, a little bit above the main lobby floor, really the second floor.

Q. What time of day did that conference occur?

A. That probably took up about one o'clock because it was after lunch it started.

Q. For how long a time did it continue?

A. It lasted, I believe, until about four o'clock; the middle of the afternoon some time or late in the afternoon.

Q. What was done at that conference?

Mr. Cooke: Perhaps we should have the same objection as to this made.

The Court: It may so appear and same ruling.

Q. What was done and what was said, as nearly as you recall, at that conference?

A. Well, at that meeting there I had the casino, as we call it, shown in the center of the building instead of on the river side, and Mrs. Mapes wanted it definitely on the river side of the building, so that changed the first floor plan of that a little bit more and after discussing it for this length of time, I went home that night and in the office I made a quick sketch of the entire scheme, changed the casino on the river side and that is approximately

(Testimony of Francis Harvey Slocum.)

the way the plan is now, and I didn't go to the meeting next day but Mr. Moorehead took this over to them and showed them some other buildings around town, but he took sketches over there, but I didn't go there next day. The sketches I made that night were the ones that were accepted more or less later.

Q. What, if you recall, did Mr. P. G. Denson say at that meeting?

A. Well, he agreed finally, too, he was satisfied with a——

Mr. Cooke: May I interrupt—the question was what was said, not what was agreed to.

Mr. Platt: Yes, that was the question.

A. Well, I don't know just what he did say, but he said, "All right, let's put it on the side."

Q. Is it fair to say that he made a statement in accord with Mrs. Mapes' suggestion? [413]

A. Yes; that is what finally happened anyway.

Q. Was anything else discussed at that particular meeting with respect to the hotel?

A. Well, of course, there was the size of the rooms and apartments and things like that and Mrs. Mapes wanted to see some apartments so they decided to go and see some. I didn't go with them. I sent these sketches over with Mr. Moorehead and they went around to look at apartments.

Q. Did Mr. Denson make any suggestions at that interview with respect to the size of the rooms which you have just mentioned?

A. No, not at that time, no.

(Testimony of Francis Harvey Slocum.)

Q. Did he make any other suggestions that you recall?

A. I don't recall of any suggestions there. It was more or less getting the general scheme decided on.

Q. Did Mr. Denson participate generally in the conversation?

A. Oh, yes, he was there, participated. What he said I really don't know now except they all agreed on this other plan. That is what I was interested in. They finally did agree on the river side and accepted the sketches I made that night.

Q. You mentioned, in answer to one of my questions, that Mrs. Mapes went around looking at apartment hotels?

A. Yes.

Q. Were you present?

A. No, I wasn't present. They went the next day. I didn't [414] go with them.

Q. You were not present?

A. No, I don't know where they went. They were going to certain ones but I don't know whether they went or not where they were to go.

Q. Do you recall having another meeting at which Mr. Denson, Mrs. Mapes or Charles and/or yourself and Mr. Moorehead were present?

A. Yes, we had another meeting in our office in Oakland in January, I believe, after the first of the year at least.

Q. You mean January, 1946?

A. '46 that would be, yes, and Mr. Moorehead, myself and Mr. Denson and Charles were present.

Q. Was there any one else there?

(Testimony of Francis Harvey Slocum.)

A. No, some of the boys in the office might have been there. I don't remember anybody else there at that time.

Q. What was the general discussion?

A. Well, the general discussion——

Mr. Cooke (Interrupting): Just a moment. Same objection.

The Court: Same objection and same ruling.

A. Well, we had these sketches supposed to be in final shape at that time, ready to start working drawings. In fact, we had started the foundation of the building at that time, had the engineering all done, which didn't affect the plan materially, [415] so that at that time they decided to enlarge some of the rooms, omit a room and decided to make less rooms so the remaining rooms would be larger.

Q. When was that decided?

A. That was in January.

Q. To omit some of the rooms and make the rooms generally larger, when was that decided?

A. That was at this January meeting.

Q. Who made that suggestion?

A. That was Mr. Denson and Mr. Moorehead discussed that and Mr. Mapes also.

Q. Do you remeber what Mr. Denson said?

A. Well, they asked Mr. Denson if he was satisfied with making larger rooms. He said certainly, he wanted larger rooms.

Q. Is it a fact or isn't it that Mr. Denson himself made the suggestion as to cutting out some of the rooms so you could have larger rooms?

(Testimony of Francis Harvey Slocum.)

A. Well, I believe it was his suggestion to have larger rooms, that was the way to get it.

Q. Do you remember when he made that suggestion?

A. That was during this meeting some time.

Q. Do you recall at that interview whether he made any other suggestion?

A. I do not believe so at that meeting. That was the only suggestion I remember at that meeting.

Q. Was there anything said by him about the sky room at that meeting?

A. The sky room didn't come up at that meeting. We were just trying to get the general plan worked out. Hadn't decided much on the sky room. Had the general space there but nothing decided much on it.

Q. Was anything at all said about the sky room by anybody at that meeting in January?

A. Really I don't believe the sky room was shown in the plans and it has been that way ever since the first sketch except at one time later they decided to enlarge it, but not at that particular time.

Q. Was any other suggestion made by anybody at that meeting as to modification or change of the plans which you submitted?

A. No, not outside of this room enlargement on the regular floors.

Q. How long did this meeting take place?

A. A couple of hours. They were there a couple of hours in the morning, then went out to lunch and

(Testimony of Francis Harvey Slocum.)

then went over to the city. I would say a couple of hours.

Q. Do you recall any further meeting at which you and Mr. Denson and either one of the Mapes were present, and Mr. Moorehead?

A. Yes, we had a meeting there—well, Mr. Moorehead had some meetings I wouldn't know of except this meeting in April, I [417] think it was, when Miss Mason came up with some sketches for furnishings of the place.

Q. That was in April, 1946? A. Yes.

Q. Do you remember what date in April that was, or about what date?

A. No, I don't know the exact date; I wouldn't be sure.

Q. Who were present at that meeting?

A. Well, Mr. Moorehead, Mr. Denson, Mr. Mapes, Miss Mason and myself.

Q. Where did it occur?

A. That occurred in our office.

Q. When did it begin and when did it finish?

A. Well, it began—Miss Mason came in with Mr. Denson, came about 10 o'clock and then Mr. Mapes came a little later. They came in around 10 o'clock and Miss Mason had a lot of drawings to show us and we looked those over and discussed them.

Q. At that time did you, or Mr. Moorehead in your presence, submit the floor plans or the general plans of the hotel?



(Testimony of Francis Harvey Slocum.)

Mr. Cooke: Let the record show my same objection interposed.

The Court: The record may show objection and same ruling.

A. Oh yes. [418]

Q. I mean were the plans of the hotel as you had them exhibited to the parties present?

A. Oh yes, they were there.

Q. Were they discussed? A. Yes sir.

Q. Did Mr. Denson participate in the discussion? A. Yes sir.

Q. Did Charles Mapes participate?

A. Yes.

Q. And did you and Mr. Moorehead and Miss Mason participate? A. Yes, we did.

Q. Do you recall generally what was discussed?

A. Well, Miss Mason brought up pictures of the plans suggesting arrangements of the coffee shop and the sky room and the kitchen lay-outs and two or three typical rooms. The coffee shop lay-out and the kitchen lay-out were not right. Of course, she didn't know I was going to design all that, so she withdrew that right away because she didn't want to interfere with my designing, so she withdrew them and then the sky room part, they had that laid out. She wanted to make changes and change from one side to another and I already had a scheme worked out with the grandstand where I originally had it. Of course, they had a few other changes that interfered with my plans that they didn't know anything about, wasn't their fault.

(Testimony of Francis Harvey Slocum.)

They wouldn't fit in with our other things so we couldn't use them very well.

Q. When Miss Mason submitted plans for equipment and furniture, that is what you mean?

A. Yes.

Q. Equipment and furnishings and accessories and all that. Did she have in her possession any plans that you and Mr. Moorhead had of the hotel itself?

A. Yes.

Q. Do you know how she came into possession of those plans?

A. Yes.

Q. How?

A. Mr. Denson took them to her.

Q. Did you see Mr. Denson take them to her?

A. No, but they brought them back and said that is where she got them.

Q. They were all exhibited there at the meeting there in Mr. Moorhead's office?

A. Yes.

Q. Was there anything said about change in the sky room at that meeting?

A. Yes, I would say she wanted to change the bandstand around.

Mr. Cooke: She?

A. Miss Mason. She was the decorator there or designer from Barker Bros. and they wanted to have the bandstand changed on the side instead of the end of the room and we didn't like [420] that. It would interfere with service from the kitchen. We didn't make that change.

(Testimony of Francis Harvey Slocum.)

Q. As I understand, the original plans for the sky room had been modified and changed by you?

A. Yes, we had enlarged that, enlarged the sky room. They had the sky room much smaller and we pushed it out and made it larger.

Q. Were you present at any discussion about the contour or size of the sky room at which Mr. Denson, Charles or Mrs. Mapes were likewise present?

A. No, I wasn't. Mr. Moorehead had been up here to Reno and he said they wanted the sky room larger. Where he got the information, I do not know, but we made it larger.

Q. At any rate, you made the change?

A. Yes.

Q. And information you had concerning it was given to you by Mr. Moorehead?

A. Yes, I wasn't at any meetings that they had.

Q. Did you have any further discussion than those you have narrated, at which Mr. Denson or Mrs. Mapes or Charles were present?

A. No, that was the last one that Mr. Denson was present. That is the last meeting I remember he was there.

Q. And you think that was sometime early in April, 1946?

A. I believe so. I wouldn't be sure. It was at the time [421] Miss Mason came up there. I believe that is the date it was.

(Testimony of Francis Harvey Slocum.)

Mr. Platt: I think you may cross-examine.

Cross-Examination

By Mr. Cooke:

Q. I believe you told us that there were no conferences at which any of these parties, Mrs. Mapes, Charles or Mr. Denson or yourself were present after this time when Miss Mason was up?

A. No, nothing where all were present.

Q. Did you attend any conference where not all but some were present? A. After that?

Q. Yes.

A. Yes, I had a conference with Mrs. Mapes and Charles and Mr. Moorehead after that.

Q. Mr. Denson wasn't there? A. No.

Q. Those conferences took place in the city or here?

A. Some here. Mrs. Mapes was down there twice or three times. Charles has been down there.

Q. From whom did you get instructions finally for the work you were to do?

A. From Mr. Moorehead. Of course all instructions would come from him because he has the contract to do it and I have a contract with him. But I was always in the meetings to give my ideas on it from the design standpoint.

Q. But when it came to a question of your doing or not doing [422] your work in a certain way, you accepted instructions from Mr. Moorehead?

A. Yes, final instructions had to come from him because I had no authority to do it otherwise.

(Testimony of Francis Harvey Slocum.)

Q. You didn't, for instance, do any work there pursuant to some instructions that Mrs. Mapes had given you? She didn't give any instructions to you how to do your work?

A. No, not unless I discussed with Mr. Moorehead first and he would say it was all right.

Q. And the same would be true in regard to Mr. Denson, wouldn't it? A. Yes, it would.

Q. This sky room and the change in the sky room, that contemplated an enlargement of it, did it not? A. Yes.

Q. What was the size of it originally before the change was brought about?

A. Well, it was approximately, I would say, 80 feet long and now it is the full length of the building. It is about 150 feet long.

Q. Do you remember at whose instigation or suggestion or insistence this matter first came up about lengthening the sky room?

A. No, I really do not. Mr. Moorehead was the one that told me about it, that they had decided now to change it. Who decided, [423] I don't know. He was up here at a meeting and he said they decided to make that larger.

Q. Did you learn anything from him as to who were at this meeting up here that you mention?

A. No, I really didn't ask him that. I don't know who was at the meeting.

Q. The first notice or knowledge you had of any enlargement of the sky room was as you said from Mr. Moorehead? A. Yes, that is right.

(Testimony of Francis Harvey Slocum.)

Q. Was the matter of enlargement of the sky room discussed at any of these meetings after that?

A. After Mr. Moorehead told me about it?

Q. Yes.

A. Well, yes, every time we came up we made some slight change in it, trying to get more glass in, etc., and made another change about the opening up the thing and we had the bandstand closed in and some dressing rooms, so you couldn't see out the north end. We put those on the floor below so we could get more view.

Q. When, as nearly as you can state, Mr. Slocum, was this communication to you by Mr. Moorehead about this meeting up here in Reno and it was decided about enlargement on the sky room?

A. I would say about maybe June or July.

Q. What year? [424]            A. 1946, this year.

Q. Did you ever discuss the matter of enlargement of the sky room with Mrs. Mapes directly?

A. I don't know that I have. I talked to her about it after we enlarged it but I don't know as I discussed it before we enlarged it.

Q. Did she express satisfaction with the enlargement?

A. Yes, I made sketches showing the enlargement.

Mr. Platt: I do not desire to limit the cross-examination but conversation between Mr. Slocum and Mrs. Mapes will be self-serving if Mr. Denson was not present.



(Testimony of Francis Harvey Slocum.)

The Court: What is the purpose of this, Mr. Cooke?

Mr. Cooke: I don't know as I have any special purpose by it. I will withdraw the question.

Q. You said something about the rooms, being a change in the original plans as to the size of the rooms. Do you remember that?

A. Yes, the floor plan, that is the typical floor plans.

Q. You remember your testimony in regard to that? A. Yes.

Q. When did the matter of enlarging the rooms first come up, Mr. Slocum?

A. As I remember, it came up in this meeting we had in January.

Q. January, 1946? [425] A. Yes, '46.

Q. That is the first you heard of it are we to understand?

A. That is the first we heard it. They discussed it at that meeting. Decided to take out a room so that we would have larger rooms.

Q. Do you know who first suggested at this meeting that the rooms be made larger?

A. No, I couldn't say who first suggested it.

Q. Were you there during the entire meeting?

A. I was in and out. I was in there most of the time, but I would be in and out, phone call or something.

Q. Did that meeting take place in our office?

A. In our office, yes.

Q. In your direct examination I think you stated

(Testimony of Francis Harvey Slocum.)

that Mr. Moorehead, as far as you heard the talk, suggested the larger rooms, am I correct in that?

A. Well, I would not be sure whether he did or not.

Q. Well, in any event, the matter of enlarging the rooms was agreed to by all those present as a proper and practical step of the arrangements?

A. Yes, they agreed to make them larger.

Q. Did Mrs. Mapes say anything on the subject at that time?

A. No, she wasn't at that meeting.

Q. Did Charles Mapes say anything about it?

A. Yes, he agreed to it. [426]

Q. What did he say, Mr. Slocum?

A. He said, "Yes, let's have the larger rooms."

Q. How much difference in size was involved?

A. Well, probably about a couple of feet to each room.

Q. And that necessitated the killing, so to speak, of one or more rooms from the original plans?

A. One room from each floor on the particular side.

Q. Now at the previous meeting, that is on V-J Day, I believe you said along about August 14, 1945, the matter of the casino change was discussed, is that right?

A. Yes.

Q. And Mrs. Mapes was present at that meeting?

A. Yes, she was.

Q. And Mr. Denson and Charles and Gloria and you?

A. Yes.

Q. You had the casino, I believe, located some-

(Testimony of Francis Harvey Slocum.)

where in the middle of the building and at somebody's instigation or suggestion it was changed to the river side?      A. That is right.

Q. Who suggested that?

A. I think Mrs. Mapes always wanted it on the river side and we were trying to bring in a store building and bring in more income, but she didn't want it that way.

Q. Was that at this meeting?

A. She always wanted that. [427]

Q. At that meeting it was changed, so far as the plans were concerned?      A. Yes.

Q. To have it on the river side, is that right?

A. Yes. They decided to do that when I made these sketches at night.

Q. Was the matter of having larger rooms discussed at that same meeting or not?

A. No, I don't think the rooms came up at all at that meeting.

The Court: Was that casino changed?

A. To the river side or Virginia Street side, not to the river side, right on the corner of Virginia and the river.

Q. From the corner easterly to the easterly limits of the building?

A. Yes. Well, it was in the center of the building facing Virginia Street, right in the center of the building, with entrance on Virginia. Now they have moved it over to the corner of Virginia Street and the river.

Q. You don't remember that the matter of any

(Testimony of Francis Harvey Slocum.)

one suggesting larger rooms was made at the August 14th meeting, is that right?

A. No, I don't remember anything about that.

Q. Now the next previous meeting was in the Fielding Hotel, I think you said, is that right? [428]

A. Yes.

Q. And the only subject that was discussed at that time was what?

A. The main subject there was the different foot levels. We had a drive-in on the ground level which raised the main floor lounge up a half story and caused a lot of steps in order to get up, so Mrs. Mapes didn't want that, so we finally changed it.

Q. Was she the only one that made any objection to that arrangement?

A. She made the most objection and the rest all agreed.

Q. She was rather positive about it?

A. Yes.

Q. She brought it up first?

A. Yes, she jumped on me every time she saw me.

Q. Argued the question with you?

A. Yes, I was the one trying to sell the idea. I didn't get away with it.

Q. Mr. Slocum, under your employment in connection with this building, just what were you employed to do? What was the scope and extent of your job, so to speak?

A. Well, I was employed to do the designing and the general lay-out work and to make the build-

(Testimony of Francis Harvey Slocum.)

ing look nice, the interior and exterior, and do all of the architectural work necessary on it. [429]

Q. Well did that, for instance, embrace substantially the same thing as what was exhibited by Miss Mason, drawings and designs, etc.?

A. Well, she was going to redesign some of these rooms and she had some interior sketches, etc., of them, but the plans at that time were in such a shape that you couldn't tell what was going to happen. The outside, some engineering and main floor beams and columns weren't fully decided on, so she brought a lot of things that wouldn't work in so we couldn't use what she had for the coffee shop and kitchen also.

Q. Who had the designing of that, whether her plans fitted in or not?

A. I told her I was going to design the coffee shop.

Q. Were the plans and designs, etc., she had, were they used to any extent at all in the final work?

A. No, they were of no value.

Q. No value whatever?

A. No. She didn't know what we were going to do with the building and didn't know what engineering we were going to do in any of these rooms, so these designs wouldn't work and she didn't know what they were because they were shown on a different plan. They weren't on that plan.

Q. Did you either then or later have plans designed and adopted that were used insofar as the building being completed?

A. Oh yes. [430]

(Testimony of Francis Harvey Slocum.)

Q. With regard to the date September 24, 1945, how far advanced was your work in respect to having plans or specifications for the building?

A. Well, we had completed sketches at that time, as I remember. We started on sketches as soon as we had this other meeting in August and we completed the sketches then. There were two or three changes in the lay-out because we had to change the upper floor on account of the change in the lower floor.

Q. You use the term "sketches," does that mean in your profession temporary designs?

A. Well, there were preliminary drawings and we finished them up to a point where, if they are decided on, we make the mechanical drawings according to them. It shows the arrangement of all columns and beams. The engineering at that time wasn't figured. We didn't know exactly the size of the columns. We had the general lay-out all worked out then; the lay-out of plans according to these engineering columns, etc., were to do. We had all those done.

Q. How about specifications?

A. Well, we didn't have anything of that kind at that time.

Q. How soon after September 24, 1945, did you have any specifications?

A. Well, we had the engineering done around the first of the year and the specifications for that part. We didn't have the [431] specifications for that part because they——



(Testimony of Francis Harvey Slocum.)

Q. (Interrupting) You say "for that part," what do you mean?

A. The engineering part is the structural part, pillars and columns and beams, etc. That is a separate job from design of the building. We had to design the building around this structure, but the structure of the beams and columns, we had to design our floor plans so these beams and columns wouldn't be in the way. You can't move them. Now we had the engineering done around the first of the year and the sketches were drawn and we knew it would work there so we could start the foundation. Then we kept adding to the plans, started the working drawings, of course, before that but kept building them as they were completed so we could order materials for that part of it.

Q. You did have some plans, designs and specifications in January?

A. Yes, we had the plans all drawn on regular scale in January.

Q. What time in January?

A. Well, there were the regular plans, specifications and scale about the middle of January they were ready.

Mr. Platt: You mean 1946?

A. Yes.

Q. Did you furnish copy of the plans and specifications, so far as you had these worked out at this time, to anybody? [432]

(Testimony of Francis Harvey Slocum.)

A. Yes, copy of prints of everything as we went along.

Q. Blueprints?

A. Yes. The job was started at this time, commenced up here.

Q. Did Mr. Denson get a copy of them, do you know?      A. I believe he did, yes.

Q. Why do you believe?

A. Well, I don't know. I didn't give him one but he is supposed to have a copy. I don't know whether he got one, but he saw the plans. Whether he got a copy, I don't know.

Q. How soon after this time in January did he see them?

A. He saw them at this January meeting that we had the plans, the engineering, was all completed at that time and plans were being drawn for the other. In fact, we had the plans all drawn and then changed this room.

Q. Do you know whether Mrs. Mapes or Charles got a copy of the plans and specifications you had at that time?      A. Oh yes, they had them.

Q. Did you see them have them?

A. No, I didn't see them. I saw them at the house one day and I seen them at the office, of course, too.

Q. Mr. Denson and Mrs. Mapes both were supposed to have the plans at that time, supposed to have a copy of the plans, whatever you had?

A. Yes sir, every one was given a set of prints.

Q. The plans and architectural work that you

(Testimony of Francis Harvey Slocum.)

did prior to [433] September 24, 1945, was based upon a planned building costing approximately 800 thousand dollars, is that right?

A. Yes, I believe so. The first was around 6 or 7 hundred thousand and then it was enlarged to about 8 or 9 hundred thousand.

Q. Did you draw any plans or specifications or any architectural drawings of any kind for the 700 thousand dollar plan?

A. Yes, these were all in sketch form, preliminary drawings. It was just preliminary drawings, you might say, because we didn't have any contract at that time either.

Q. But you were doing some of that work based upon the contemplated cost of 700 thousand dollars?

A. Yes sir.

Q. And then some time prior to September 24, 1945, it was increased to 800 thousand, is that right?

A. Yes.

Q. And after that time it was increased again, or not?

A. Yes, it was increased several times after that.

Q. That would necessitate change in your plans and specifications?

A. Yes, it did.

Q. When was the first change made with respect to the proposed cost of the building?

A. Well, the first change—the first sketch I made was for around 675 thousand, as I understand it, and sketch was made [434] in '44. That was the first sketch I made, and then in 1945 that was revised because they had added to the building and

(Testimony of Francis Harvey Slocum.)

we made this first floor change, which made a change in the set-up and I had a tower effect worked out in the first one and Mrs. Mapes wanted the building to run right along evenly instead of set back, so that made a change and also made a change in the cost because it covered more ground, so that ran the cost up another hundred or two hundred thousand.

Q. What was the total figure at that time?

A. Well, the figure at that time the second general change made, was around 850 to 900 thousand.

Q. When was that with reference to September 24, 1945, before or after?

A. That was after that.

Q. Then after September 24, 1945, when was the next change with regard to the cost of the proposed building, size, etc.?

A. Well, it was about in June, I would say, of this year, or July, that they added two more stories. There was one before that, of course, where we added to the sky room. That made about 50 or 75 thousand difference there and in June or July they added two more stories to the building, which made a big difference.

Q. From 10 to 12 stories? A. Yes.

Q. That jumped the cost up how much? [435]

A. Well, jumped the cost 300 or 400 thousand, I would say.

Q. From 875 thousand or whatever it was before that? A. Yes sir.

Q. Do you know anything about the construction

(Testimony of Francis Harvey Slocum.)

work that was done here to get an additional 12 feet?

A. Yes, several of these sketches, the first sketches we made, were made for 12 feet additional. They made sketches adding 12 feet to the width of the building and that 12 feet wasn't obtained, so we changed it back to the present width.

Q. In September of 1945, had you, either yourself or through Mr. Moorehead, delivered any prints or copies of prints and specifications and designs of the building to Mr. Denson?

A. Mr. Moorehead had sent some down to him and I believe he took some down.

Q. Is the same true with regard to Mrs. Mapes, she was furnished with them too?

A. Oh yes, she was furnished with them too.

Q. Do you know what those specifications or plans consisted of?

A. They were preliminary plans of these different schemes we had made for the building.

Q. That contemplated a building not to cost more than 800 to 875 thousand?

A. Most of them were made on that basis. We made the first one around 675 thousand and then the next batch from there on [436] were on the larger amount, figuring on 10 stories, which were around 900 thousand.

Q. Do you have any specifications at this time, copies of which were exhibited to anybody?

A. No.

(Testimony of Francis Harvey Slocum.)

Q. You have had specifications since that time, have you not? A. Oh yes.

Q. Have you delivered copies of those to anybody?

A. Yes, they all have copies, Mrs. Mapes—I don't know whether anybody else—the contractor, etc.

Q. Do you know whether Mr. Denson has any or not? A. He may have, I don't know.

Q. But you know the Mapes family got them?

A. Yes, I know they had them.

Q. When did they get them in regard to the time they were prepared, shortly afterward?

A. Yes, as soon as they were prepared we mailed them up or took them up, Mr. Moorehead did.

Q. Is my understanding correct that those specifications were available some time earlier than January, 1946?

A. Yes, part of them were. We drew them in sections. The engineering was done first and then follows the other types of engineering, like heating and plumbing and we make separate specifications and then we make specifications as we design the rest of the building. The specifications are made with the designs.

Q. After this meeting in January, 1946, further specifications were prepared and copies furnished, is that right? A. Yes.

Q. And were they furnished to Mr. Denson?

A. Well, you mean after the April meeting?

Q. No, I mean after the January meeting.

A. They may have been, I don't know.



(Testimony of Francis Harvey Slocum.)

Q. Do you know whether they were furnished the Mapes family?

A. Yes, I know they have them.

Q. Do you know whether they were furnished shortly after they were prepared?

A. Yes, they were.

Q. You are now stating specifications after the January meeting. You state you prepared them from time to time?

A. After the January meeting?

Q. Yes.

A. We prepared specifications as we designed different parts of the building.

Q. How many different batches of specifications did you prepare and deliver copies to the Mapes family?

A. Well, probably 30 or 40.

Q. Well, from time to time as the work progressed?

A. As the work progressed, yes.

Q. Does it continue to occur now? [438]

A. Yes.

Q. As changes are made now are additional specifications made?

A. Yes, just this last week.

The Court: It might be well to take our recess at this time.

(Recess taken at 11:50 a.m.)

Afternoon Session, December 10, 1946, 2 p.m.

All attorneys present.

Mr. Slocum resumed the stand on further cross-examination by Mr. Cooke.

(Testimony of Francis Harvey Slocum.)

Q. Mr. Slocum, tell us as nearly as you can, the first time you discussed with Mr. Denson the matter of the construction of the building to be commenced?

A. Well, I don't know as I discussed anything with him about the building to be commenced.

Q. When did actual construction of the building commence?

A. Well, actual construction of the building began in January. We took the old building down in December and started the excavation and also changed the irrigation ditch on the outside before that.

Q. When did you commence the work of excavating or tearing down the old building? [439]

A. Work tearing down the old building was started in December some time.

Q. Do you remember what time?

Mr. Platt: Just a moment, may I interrupt. Do you know that of your own knowledge or what somebody else told you?

A. I was here when they were tearing down the old building and just started it and I was here about December 18th or 19th. They had started.

(Previous question read.)

A. About the middle of December, yes.

Q. 1945? A. Yes.

Q. Did you have any conversation with Mr. Denson in regard to this construction or demolition after that?

A. No, I have not talked to Mr. Denson since

(Testimony of Francis Harvey Slocum.)

the meeting we had in January some time.

Q. Was the matter of the status of the construction work and its progress or its commencement discussed at that meeting?

A. I don't believe so, no. Not with me, at least; I don't remember.

Q. Whether it was with you or you heard it discussed between the others?

A. No, I don't remember.

Q. It didn't come up while you were there?

A. No. [440]

Mr. Cooke: I think that is all.

### Redirect Examination

By Mr. Platt:

Q. I understood you to state, Mr. Slocum, that you were present at a conference or a meeting in Mr. Moorehead's office in Oakland on or about April 1st?

A. Yes, sir.

Q. 1946?

A. Yes, sir.

Q. At which Charles Mapes and you and Mr. Moorehead and Miss Mason and Mr. Denson were present?

A. Yes, sir.

Q. Did you hear Charles Mapes make any statement with respect to not wanting to do any more with the sky room, that there was something he wanted to take up later?

A. No, I didn't hear him discussing that at all.

Q. You didn't hear him make that statement?

A. No, I didn't.

(Testimony of Francis Harvey Slocum.)

Q. I understood you to state also that about January 15, 1945, you, or Mr. Moorehead in your presence, furnished Mr. Denson with a copy of the then plans?      A. Yes.

Q. And as I took down a note of your testimony you stated that Mr. Denson was supposed to have a copy of the plans?      A. Yes. [441]

Q. Do you know why he was supposed to have a copy?

A. Well, he was given copies of all the sketches there as he was interested in the place. I didn't know just how at that time, but Mr. Moorehead always sent him a set of sketches when they were made.

Q. Would you state that was an invariable practice?

A. Yes, he always either took it down or mailed it down.

Q. Do you know when that practice was suspended, when you didn't give Mr. Denson any more plans?

A. Well, after this April 1st meeting that we had I don't believe we sent any more down to him. I am not sure because Mr. Moorehead handled that. I didn't send any down myself.

Q. Did Mr. Moorehead instruct you not to send any more after April 1st?

A. Yes, he told me then that Mr. Denson wasn't in the picture any more and that was the case, although I had nothing to do with it directly myself; he had told me that.

(Testimony of Francis Harvey Slocum.)

Q. You gave some testimony on cross-examination as to the probable expense of construction of the hotel building, in which you set a figure of two or three hundred thousand dollars for the two upper stories. Did I understand you right?

A. It first started out with 675 thousand and then went up to 8 or 9 hundred thousand and then it went up 250 thousand, along in there, so with the addition of that and other things that went into it, it would all come to that. [442]

Q. As an architect, skilled in the matter of building construction, it is a fact, isn't it, that the two lower stories of a hotel structure like the building here, are really the most expensive parts of the operation?

A. Well, the columns, etc., are in there but in a hotel they are not necessarily the most expensive because there is not nearly as much plumbing as on the other floors.

Q. But the construction cost, so-called, eliminating fixtures and plumbing, etc., are these higher on the first two stories?

A. Well, it depends on the height of the ceiling. In this case, where you have a large area, of course, the construction cost is lower than with a small area, like when you put in partitions, it costs more than a large open space. Of course, we have decorations which more or less offset that, so it may or may not. I don't know just exactly what are the costs right at the moment, whether that is higher or lower than the upper part.

(Testimony of Francis Harvey Slocum.)

Q. As a matter of fact, when you get above the first two stories, for instance, frame work and carpenter work, as you go up you can use that same material, the same structure in forming the forms of the foundation for your concrete and brick?

A. Yes, if you have a duplicate of the floor, of course, you can, and as you go up beyond the first two stories that would be a little more.

Q. But as you go up the cost is less for that reason? [443]

A. In certain cases it is if you have planned on it in the first place. Sometimes the cost is more if you haven't planned on it.

Q. As a matter of fact, take the hotel in which we are interested now, from the second to at least the tenth story the structural cost for each story between the 2nd and tenth would be less than the structural cost for the first two?

A. Well, I doubt it now because you have to haul everything up that much higher. As a rule, as you go up the cost is more if you have to haul material from the ground to the roof. The additional cost is substantial for that raise. If you stop at the fourth floor, you have less cost than building the additional floors.

Q. Let me ask you this question, Mr. Slocum. In your opinion, considering this particular structure, do you believe the third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth floors cost more or less than the first two floors?



(Testimony of Francis Harvey Slocum.)

A. Well, they would cost more in this case. Where you have so many stores they don't cost very much. Where you have stores, it is very inexpensive, that is the cheapest part of the building, but if we have lobbies and dining rooms, it probably would cost more.

Q. Stores are on the first floor?

A. On the first floor.

Q. Is the second floor more costly than the third, fourth, [444] fifth and sixth floors?

A. No, you have large open spaces, because the stores run up in that space. Where there are other rooms, like banquet rooms, etc., although that is a big area, it costs money to do that, more than the stores.

Q. Of course, I am reminded that the lobby is on the ground floor too?

A. Yes, that is on the ground floor.

Q. Then you have all the excavation work.

A. Yes, the excavation is below that, yes.

Q. And you have all the additional foundation work to hold the upper stories? A. Oh, yes.

Q. That is all an additional expense?

A. Of course, your foundations were figured for 12 stories and of course that naturally cost more than if you first figured for ten.

Mr. Platt: I think that it all.

#### Recross-Examination

By Mr. Cooke:

Q. With reference to the sky room, Mr. Slocum,

(Testimony of Francis Harvey Slocum.)

and the cost of that particular floor, how does that expense compare with the third, fourth and fifth floor and so on?

A. Well, we are doing a lot of decoration and fancy work up there, which would probably bring it up to about the same [445] cost as the typical room floor would be. The typical room floor is the most expensive floor we have. They have additional plumbing, etc., whereas if we have large areas, although we put a lot of money in decorations, the cost per foot probably wouldn't be as much as the typical room floors.

Q. One would sort of offset the other?

A. Yes, there wouldn't be much difference, because we are putting a lot of money in the sky room floor that we wouldn't put in the typical room floor.

Q. But because it is all one area, that lessens the expense?

A. If it is all in one big area, which it is, it costs less than if it is divided up into small areas with partitions, columns, etc.

Q. You refer to the item of lifting, getting the material, etc., up to the upper stories as increasing the cost of construction of that portion of the building. Is that a substantial item?

A. Well, it is the cost of the elevator and operation of it.

Q. Is that a fairly substantial item?

A. It is quite an item, yes, nowadays. Just how much I couldn't figure out, but it always is a big

(Testimony of Francis Harvey Slocum.)

item. We have to haul material up and then you have to take the other part down. They have men now taking up the forms and it is so far up, it just takes a lot of time.

You stated on your redirect examination that Mr. Moorehead [446] told you on one occasion not to send any more copies of the plans and specifications, etc., to Mr. Denson, that he was out of the picture, do you remember that?      A. Yes.

Q. When was that statement made to you by Mr. Moorehead, as nearly as you can fix it? Was it before or after April 1st?

A. It was after that date of the meeting, after April 1st.

Q. Do you know about how long after?

A. I would say a day or so, a couple of days.

Q. Do you have any knowledge of there having been a subsequent meeting between Mr. Denson and Mrs. Mapes and Charles Mapes here in Reno on or about April 10th?      A. No, I do not.

Q. You didn't hear them discuss it in any way?

A. No, I didn't, not at all.

Mr. Cooke: I think that is all.

#### Redirect Examination

By Mr. Platt:

Q. You are certain no instructions were given you prior to April 1, 1946?      A. No.

Mr. Platt: That is all. [447]

Mr. Platt: We would like to call Mrs. Charles W. Mapes as an adverse witness, your Honor.

The Court: You may do so.

---

### MRS. CHARLES W. MAPES

one of the defendants, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Platt:

Q. Mrs. Mapes, you are one of the defendants in this action? A. I am.

Q. And your son and daughter are the other two defendants? A. They are, yes, sir.

Q. Your son and daughter are both married, are they not? A. Yes.

Q. And the three of you have lived for some years in your present home in Reno?

A. Yes.

Q. Under the same roof? A. Yes.

Q. During the negotiations which led to the execution of the agreement in evidence here, were you under the advice of your counsel, Mr. H. R. Cooke?

Mr. Cooke: Objected to as irrelevant and immaterial, calling for question of whether she had legal advice as to negotiations. The negotiations themselves are not material, whether she had legal advice or not. We will be obliged to stand on this and analysis of these negotiations, directly or in-

(Testimony of Mrs. Charles W. Mapes.)

directly, have no place in the record before the Court. [448]

The Court: Objection overruled. You may answer the question.

(Question read.)

A. The only time I consulted counsel on this agreement was in the presence of Mr. Denson and my son Charles, is the only discussion before, you say, this agreement was signed?

Q. Mr. Cooke has represented you generally as your counsel, hasn't he, in all your business affairs?

A. Yes.

Q. And it had been your practice and habit to consult with him on all business matters requiring legal services?

A. Yes.

Mr. Cooke: We object to all this.

The Court: This is in the nature of cross-examination?

Mr. Platt: Yes.

The Court: Objection overruled.

Mr. Platt: I don't think it is necessary, but I can refer your Honor——

The Court: I think that is the same as the State rule.

Q. Is it a fact that some time in 1940 that you had a conversation with Mr. Denson and some other persons with respect to your building a hotel in Reno?

A. Mr. Denson and two other gentlemen came to see me in 1940 and asked me at that time to build a hotel for them. [449]

(Testimony of Mrs. Charles W. Mapes.)

Q. And after their visit in 1940 did you confer with Mr. Cooke at all about building a hotel?

A. On this visit in 1940?

Q. At any time after 1940 when you had this visit with these two gentlemen, did you confer with Mr. Cooke about building a hotel?

A. Well, I wonder if I understand your question. Did I ever discuss building a hotel with Mr. Cooke?

Q. Yes.

A. I think it was always my intention, yes, if that is what you mean.

Q. Well, didn't you, prior to 1940, discuss with your attorney, Mr. Cooke, the probability of your building a hotel?      A. Yes.

Q. And after you met these two gentlemen at your home in 1940, did you continue to discuss with Mr. Cooke the probability that you would build a hotel.

A. Oh, I possibly did. I always had it in mind that it is going to be built.

Q. Isn't it a fact, Mrs. Mapes, that you always did, that you conferred with him very frequently about the probability that you were going to build a hotel in Reno?

Mr. Cooke: If the Court please——

A. (Interrupting): Well, I believe——

Mr. Cooke (interrupting): Just a moment. What [450] counsel apparently is seeking is to find out if there was any discussion between Mrs. Mapes



(Testimony of Mrs. Charles W. Mapes.)

and myself in regard to the Denson hotel project. There may have been other discussions with other parties that certainly has no bearing upon the Denson arrangements and Denson connection with the project and I object to this question upon the ground it is asking in effect if she ever discussed with me the matter of construction of a hotel for anybody or with anybody, or any kind of hotel. That is entirely irrelevant and outside of any issue in the case.

The Court: It seems to me to be immaterial, but I was just wondering how it is to be construed in the light of the theory of this witness' presence on the stand here as an adverse witness, whether it could possibly be considered proper cross-examination. I do not see how it could be either. I do not see where it would affect anything that has been so far introduced in evidence.

Mr. Platt: What we are trying to do, your Honor, is to show through this witness she was constantly consulting Mr. Cooke in relation to her business interests, involving any legal matters at all.

The Court: What difference does that make in this case? [451]

Mr. Platt: A great deal of difference, your Honor, because issues have been joined and the pleading indicates some advantage, imposition was made and pressed on Mrs. Mapes and we desire to show, and I will state frankly—

(Testimony of Mrs. Charles W. Mapes.)

The Court (interrupting): Objection overruled.  
Answer the question.

(Question read.)

A. Well, I really don't know how to answer that because it was just as it would come up at the time that I would confer with Mr. Cooke on any matters pertaining to building or construction. I did ask him different legal questions or something like that, but I don't recall any of this pre stuff from 1940, if that is what you are trying to place, and I know I never talked in 1940 with Mr. Cooke on the hotel with Mr. Denson and these other parties that came in. That is the best I can answer you.

Q. Then I understand your answer to be that neither prior to 1940 or subsequent to 1940 did you discuss general hotel matters with Mr. Cooke?

Mr. Cooke: Same objection.

The Court: Same ruling. I think he was just summarizing.

Mr. Platt: I want to find out what she did testify to.

The Court: Read that statement to Mrs. Mapes.

(Answer read.)

A. I guess I did, I don't know. I would have to have a specific thing brought before me before I could bring up this. I don't have it in my mind.

Q. You testify about an interview with these two gentlemen in 1940 in your home about building a hotel?

(Testimony of Mrs. Charles W. Mapes.)

A. No, they came to me and asked me to build the hotel.

Q. I understand your discussion was about building a hotel with these two men?

A. Yes.

Q. Now did you report to Mr. Cooke this interview?      A. No.

Q. You never did report it?

A. No, not that I recall.

Q. Was Mr. Denson, the plaintiff in this action, present at that interview?      A. Yes.

Q. When did you see Mr. Denson again in Reno?      A. In 1944.

Q. Do you remember about what time of the year it was, Mrs. Mapes?

A. It was in the spring.

Q. Do you recall who were present at that interview?

A. Yes, I was there and my daughter Gloria. I believe that is all. [453]

Q. And Mr. Denson?

A. And Mr. Denson and myself.

Q. Do you recall what was said?

A. Yes, Mr. Denson dropped by and said he was driving through, he was out looking around, had been on a trip, and he came by to say "hello" and he had some oranges, a box of oranges, and was very anxious that we share the oranges with him and he sat down and visited. I think in the course of conversation he said, "I see you haven't done anything with your property," and I said, "No,

(Testimony of Mrs. Charles W. Mapes.)

I am waiting for my son to return from the service."

Q. Was anything further said about your building a hotel?      A. No.

Mr. Cooke: I wish—just a moment. I want to interpose an objection, as those embraced in our objections heretofore stated, as to negotiations being an admitted fact, that there was a writing, the basis of plaintiff's cause of action, and signed by the parties September 24, 1945. It is conclusively presumed all prior negotiations must have been merged in that for the purpose of this case.

The Court: Same ruling heretofore made to the same objection. You may answer the question, Mrs. Mapes.

(Question read.)

A. No. [454]

Q. Do you recall that you told Mr. Denson why you were waiting for your son?

Q. Well, it was always our intention to develop the property. It was my husband's idea that this was to be for my son and daughter and at that time he had planned to erect a hotel if he had lived and I was carrying out his wishes.

Q. You mean that this particular property upon which the hotel is now being built was bought for your son and daughter?

A. It eventually would be for the son and daughter, yes, Mr. Platt.

(Testimony of Mrs. Charles W. Mapes.)

Q. That was your husband's request and you always understood——

A. (Interrupting): It was just our conversation, just an understanding.

Q. But you always so understood it?

A. Yes.

Q. But primarily the property was left——

A. (Interrupting): No, not primarily at all, just our intention that this property would eventually be for the benefit of the son and daughter.

Q. Did you tell Mr. Cooke about this interview that you had with Mr. Denson?      A. No.

Q. In 1944?      A. No.

Q. You didn't mention it to him at all? [455]

A. Not that I recall.

Mr. Cooke: If the Court please, I think it is in the scope of privileged communication. There ought to be some limit to it.

Mr. Platt: Of course we can answer that——

The Court (Interrupting): I think she can answer that question, whether she did or not. Objection will be overruled.

A. You mean after Mr. Denson had been to see me?

Q. Yes, within a reasonable time after, did you tell him about the conversation?

A. No, not that I recall, Mr. Platt.

Q. When did you see Mr. Denson again in Reno, if at all?      A. I believe about September.

Q. 1945?      A. Yes.

(Testimony of Mrs. Charles W. Mapes.)

Q. Do you remember about when in September?

A. No, I can't give you a definite time on it.

Q. Where did you see him?

A. In my home.

Q. Do you remember who were present with him there?

A. My daughter Gloria and I think my son Charles and myself and Mr. Denson.

Q. What was said at that interview?

Mr. Cooke: Same objection as to preliminary negotiations, [456] your Honor, heretofore made.

The Court: Objection may be deemed made as heretofore stated and the same ruling.

A. I think we just talked generally and he wanted to meet my son Charles. Said he was very anxious to meet him, would like to meet him. I think I had spoken so highly of my son, naturally he would be interested in meeting him.

Q. Well, you signed the agreement, didn't you, Mrs. Mapes? I will call your attention to it later, but you signed the agreement yourself on September 24, 1945, is that true?

A. Yes. Are you talking about 1945 or 1944 now?

Q. I am talking about——

A. (Interrupting): I am talking about '44.

Q. Well, I beg your pardon.

A. You asked me the next time I saw Mr. Denson from the spring meeting?

Q. I am sorry.

The Court: September, 1944.

A. I met him in September, 1944.



(Testimony of Mrs. Charles W. Mapes.)

Q. And you say Charles and Gloria were present?      A. Yes.

Q. And did you discuss the hotel at all with him?

A. Not that I recall.

Q. How long did he remain at your home at that time?

A. It was a short visit. I don't recall it very much. [457]

Q. Did he state the object of his visit?

A. Oh, just a friendly visit. He had come back, talked and wanted to meet Charles and was wondering how we were getting along with our plans and if we had done anything, etc., like that.

Q. To what plans did he refer?

A. To the hotel building we were planning, or contemplating building.

Q. Do you remember what you said to him?

A. No, I don't. I think at that time—in 1944—I think at that time we discussed plans, that we were going ahead on any plans, but we were discussing the hotel.

Q. I don't want to misconstrue what you said, but do you mean that in September, 1944, when you talked to Mr. Denson at your home, you then discussed plans?

A. No, no, I am sorry. I am getting '44 and '45 mixed up.

Q. Do you mean prior to that time?

A. Prior to that time we had discussed it. It was in '45 that any plans were discussed.

(Testimony of Mrs. Charles W. Mapes.)

Q. Then my understanding is that when Mr. Denson visited you in September of 1944 you didn't discuss any plans of any hotel at all?

A. I believe in '44 we did, yes.

Q. Do you remember what Mr. Denson said you said and Charles said, if anything, and Gloria said?

A. Well, really the first discussion that came up is when Mr. Moorehead came to see me about plans and that is when plans were entered into and discussed.

Q. I think we will reach that a little later.

A. That is why I am getting all confused because I don't know as I discussed with Mr. Denson at any time about plans and that is why I am getting confused.

Q. Well, we are trying to get the truth and I want to understand what your testimony is and if you don't understand my question I wish you would ask me to repeat it so I can make it clear, and what I am trying to do now is to find out whether at this interview with Mr. Denson in September, 1944, you discussed with him plans of the contemplated hotel?

A. I don't recall, no.

Q. You don't remember whether you did or not?

A. In 1944, no.

Q. You don't recall? A. No.

Q. If there was such a conversation, you don't remember it? A. No.

Q. Do you remember when, if at all, you saw Mr. Denson again?

A. Not definitely I wouldn't recall. The definite

(Testimony of Mrs. Charles W. Mapes.)

part would be in August of 1945, when we looked at plans. I think Mr. Denson had called on the telephone several times but what we talked about I don't just recall his conversations. [459]

Q. You say Mr. Denson talked to you over the phone several times during the year 1945?

A. I don't remember, Mr. Platt. He might have, yes.

Q. Well, do you remember or don't you remember?  
A. No, I don't remember.

Q. Didn't I understand you to say a few minutes ago, Mrs. Mapes, that Mr. Denson had talked to you over the phone several times?  
A. Yes.

Q. Well, was that in 1945 before he saw you later in '45?

A. In '45, yes, he talked to me on the phone in '45.

Q. Well, did he visit your home in '45?

A. Yes.

Q. And about when was that?

A. Let me see. Well, he was at our home in September in '45, around the 24th of September.

Q. Well, on September 24, 1945, you yourself personally signed the agreement in evidence here, didn't you?  
A. No.

Q. I show you, Mrs. Mapes, Plaintiff's Exhibit "C," which is the agreement and which bears date September 24, 1945.  
A. Yes.

Q. Do you recognize that? I show you what pur-

(Testimony of Mrs. Charles W. Mapes.)

ports to be your signature, Irene Gladys Mapes, first party.      A. Yes. [460]

Q. Is that your signature?      A. Yes.

Q. Do you remember when you signed that?

A. Yes.

Q. When?

A. October 4th, around October 4th.

Q. Do you know whether or not this agreement, with your own personal signature on it, was sent by your attorney, Mr. Cooke, to Mr. Denson at Los Angeles, that it was signed by you personally on the 24th of September, sent by Mr. Cooke to Los Angeles, that later Mr. Denson came to Reno and met you in Mr. Cooke's office and he signed this agreement on October 4th?      A. No.

Q. Is that true or isn't it?

A. No, not to my recollection.

Q. Well, you say that Mr. Denson visited you in 1945 about the 23rd of September, did you say?

A. Yes.

Q. Did you see any proposed copy of this agreement on September 24, 1945?      A. Yes.

Q. Where did you see it?

A. As far as I can recall it was in Mr. Cooke's office on the 24th and it was a paper in triplicate that Mr. Denson had brought and Mr. Cooke penciled the thoughts of all present or [461] the legal suggestions, thoughts. That is my recollection of the paper.

Q. The terms, conditions, covenants and lan-

(Testimony of Mrs. Charles W. Mapes.)

guage of this agreement were all clearly understood by you, weren't they? A. Yes.

Q. They were all explained to you, weren't they, by Mr. Cooke? A. Yes.

Q. You had a complete understanding of every-think and what it meant?

A. I don't think, when you asked if they were explained by Mr. Cooke—I think I had an understanding of what that meant, yes, it wasn't explained to me. I read it and understood what it meant.

Q. Did you discuss the terms, conditions, covenants and language of this agreement?

A. No, not the language, that is *write* down. I read the paper and understood what it meant.

A. In this agreement, Mrs. Mapes, it is provided that Mr. Denson is to pay you, on its execution and signing the sum of ten thousand dollars in cash or lawful money——

Mr. Cooke: Objected to as assuming a fact not in evidence. There is no such recital in the contract. The two parties were to put up twenty thousand dollars.

Mr. Platt: Well, if your Honor please, I would like to be permitted to finish my question. [462]

The Court: Finish the question and then if Mr. Cooke wishes to interpose an objection at that time he may do so.

Q. ——and that your son, Charles W. Mapes, is to pay you an equal amount?

Mr. Cooke: We object as assuming a fact not in

(Testimony of Mrs. Charles W. Mapes.)  
evidence. There is no such provision in the contract.

Mr. Platt: We submit there is.

The Court: May I see the contract? The first paragraph of the contract recites: (Page 2) "In consideration of the premises and for other valuable and sufficient consideration \* \* \* that contemporaneously with the execution and delivery hereof, the second parties shall deposit with first parties twenty thousand dollars in cash as a guaranty of their good faith." How does that differ from the statement Mr. Platt made, Mr. Cooke?

Mr. Cooke: Well, that is a joint obligation, is our contention; that this is obligation of each to put up twenty thousand dollars if the other fails. There is nothing in there says Mr. Denson shall put up ten thousand and Charles Mapes the other ten.

Mr. Platt: Do you mean to say that Mr. Denson is to put up twenty thousand and Mr. Mapes twenty thousand? [463]

Mr. Cooke: No. Just like signing a note jointly. They agree to pay twenty thousand and if Mr. Denson did not put up and Mr. Charles Mapes wanted to go in, he would have to put up the full twenty thousand in order to keep the contract alive and the same is true of Mr. Denson. We have heard a lot about his putting up ten thousand dollars and——

Mr. Platt (Interrupting): I must state I am astonished at that statement.

Mr. Cooke: You will be astonished a lot more times.



(Testimony of Mrs. Charles W. Mapes.)

Mr. Platt: I expect to be before I get through.

The Court: Gentlemen. It says, \* \* \* second parties shall deposit with first parties the sum of twenty thousand dollars." It does not state, as recited by Mr. Platt in his question, that it provides ten thousand dollars is to be paid by Mr. Denson and ten thousand dollars to be paid by Mr. Charles Mapes. just twenty thousand dollars to be paid by second parties. Now, does it make any difference whether one or all?

Mr. Platt: I don't think so, your Honor. I withdraw the question and will clarify it further on by the acts of the party.

Q. I hand you, Mrs. Mapes, Plaintiff's Exhibit "A" which purports to be a check signed by Peter D. Denson, dated October 4, 1945, and payable to you. I will ask you if you have [464] ever seen that check before? A. Yes.

Q. When did you get that check?

A. October 5th, I believe.

Mr. Cooke: Just a moment. It is not material; it is admitted in the pleadings.

The Court: This is cross-examination. Objection overruled. The answer may stand. She stated October 5th.

A. Around October 5th.

Q. Wasn't it October 4th, the day Mr. Denson signed this contract?

A. Well, it could have been, yes.

Q. Did you see him make out the check?

A. Yes, I believe I did; yes, I did.

(Testimony of Mrs. Charles W. Mapes.)

Q. And he made it out on the same date and time that he signed the contract? A. Yes.

Q. Did you cash this check?

A. Yes, I did, I deposited it.

Q. Has your son, Charles W. Mapes, ever paid you ten thousand dollars? A. No.

Q. Did you ever ask him for it?

A. No, I asked him about it one time, what about the other [465] ten thousand dollars.

Q. Well, you never expected him to pay it, did you? A. Oh, yes.

Q. When?

A. Well, I knew I could get it any time I demanded it. I believe, Mr. Platt, that was clear but it was never definitely stated——

Q. (Interrupting): If you will just answer the question. You say you expected to get it from Charles if you ever demanded it?

A. No; I asked Charles about the rest of the money, what about the twenty thousand in total.

Q. When did you ask him that?

A. After this check has been deposited, had been given to me.

Q. What did Charles say?

A. He said, "Mother, we will wait until we get together. When we get together with Mr. Denson in an agreement as associates, at that time we will pay the rest of the money."

Q. Now let me understand your answer, Mrs. Mapes. You testify that on October 4th you accepted this check from Mr. Denson? A. Yes.

(Testimony of Mrs. Charles W. Mapes.)

Q. And that you later deposited it to your account?      A. Yes.

Q. Now when, after the acceptance of that ten thousand [466] dollar check from Mr. Denson did you talk to your son, Charles W. Mapes, about his paying his ten thousand?

A. Well, I don't think it was in the sense of his paying his ten thousand—when I was to get the twenty thousand in full.

Mr. Platt: Will you read the question?

(Question read.)

Mr. Cooke: Objected to as assuming a fact not in evidence.

The Court: I think that is true.

Mr. Platt: This is cross-examination; an adverse witness.

The Court: However, she has already answered that question.

Mr. Platt: The reason for putting the question this way is because she did talk to her son about it and I am trying to find out when.

The Court: The answer may stand.

Q. Did you ever make a demand on your son to pay ten thousand dollars?

A. No, I didn't.

Q. And you haven't done it yet?

A. No, I understand I could always get it.

Mr. Cooke: Wait a minute. We object to that on the ground it is incompetent, irrelevant, and immaterial whether she has done that yet, and I object

(Testimony of Mrs. Charles W. Mapes.)  
to the question [467] as to any demand ever made, upon the ground there is no occasion or any reason or anything in the contract that requires her to make a demand. They are supposed to put up this 20 thousand dollars. Whether it comes from one or the other or both is immaterial.

The Court: I think she has already answered in response to a former question that she never made any demand upon her son Charles. The answer may stand. As far as this next question, it seems to me it is already answered by the former question, she never made demand.

Mr. Platt: That is right. It is comprehensive.

Q. Did you ever make a demand on Mr. Denson for an additional amount than the ten thousand dollars he paid you?      A. No.

Mr. Cooke: I move to strike the answer until I make my objection.

The Court: The answer may go out. Make your objection.

Mr. Cooke: We object on the ground there is nothing in the contract requiring any demand to be made. The contract requires they put money up for the execution of the document.

The Court: The objection will be overruled. Answer the question now.      A. No. [468]

Q. I call your attention, Mrs. Mapes, again to Plaintiff's Exhibit "C," which is the agreement signed by all of the parties to it, particularly page 3 and paragraph 5, which reads as follows: "That the rental for such structure when completed, with

(Testimony of Mrs. Charles W. Mapes.)

the exceptions noted above, shall be as follows: 5% of the gross receipts from food sales, 10% of the gross receipts from liquors, wines and beer sales, 30% of the gross receipts from hotel rooms and apartments." Did you, prior to the signing of that agreement, discuss the rental royalties as stated there with your counsel, Mr. Cooke?

Mr. Cooke: Objected to on the ground it is incompetent, irrelevant and immaterial, as to whether it was discussed or not. The agreement is conclusive evidence.

The Court: Objection overruled. You may answer the question.                   A. No.

Q. You never discussed that with Mr. Cooke?

A. Before signing?

Q. Yes.

A. It was all agreed on there and when it was signed, no. That was Mr. Denson's——

Q. (Interrupting): I don't want to misunderstand you and I hope you won't misunderstand me, but what I am asking you, Mrs. Mapes, as to whether you discussed with Mr. Cooke these rentals that were to be paid you by your son, Charles, and Mr. Denson, representing 5 per cent of gross receipts from food sales, 10 per cent of gross receipts from liquor, wines and beer sales, 30 per cent of gross receipts from hotel rooms and apartments.

Mr. Cooke: Object to that, if the Court please. That is taking in too much territory. If he means prior to the time it is signed, I think he ought to change his question.

(Testimony of Mrs. Charles W. Mapes.)

Mr. Platt: I will change it to that extent—prior to the time of signing. I think that was understood by the question.

Mr. Cooke: Don't depend too much on what was understood.

A. I knew of those rates. When you discuss things you usually take it apart, don't you? That is my idea of a discussion. I don't know what you mean.

Q. When did you first learn of these rates and when did Mr. Cooke first learn of these rates?

Mr. Cooke: Mrs. Mapes is not competent to testify when I first learned of the rates.

The Court: The latter part probably is subject to that objection.

Mr. Platt: I think that is right, your Honor. I can question Mr. Cooke to find that out.

A. What was the question again? [470]

Q. When did you first learn of these rates of rental that was in that agreement?

A. Mr. Denson brought the paper with those rates on it. He had it in triplicate, to my home. That was, I would say the 23rd and 24th.

Q. Of September?

A. And 22nd, yes, of September. That was the first I had ever seen it.

Q. Well, did you ever discuss with anybody else the proper and appropriate rentals for rentals of this type and character?

A. No, I did not.



(Testimony of Mrs. Charles W. Mapes.)

Mr. Cooke: I move to strike the answer until I can make my objection.

The Court: The answer may go out, and what is your objection?

Mr. Cooke: It is incompetent, irrelevant, and immaterial as to whether she discussed with anybody the matter of these percentages. How can that have any bearing here and what possible bearing could that have in helping your Honor to determine whether there is a contract here for specific performance?

The Court: I think that is right.

Mr. Platt: The issues in this case practically deny the equities of this contract, if your Honor please. I mean it is very difficult to comprehend just what the answer [471] does mean in some respects, but the issue, I think, is joined upon the proposition that these rents are not adequate.

The Court: Well, the objection will be overruled and you may answer the question. You understand the question, Mrs. Mapes?

A. If I discussed with any one else on these prices?

The Court: Yes.

A. No, I did not.

Q. Do you know whether your attorney did?

A. No.

Mr. Cooke: Move to strike the answer. Don't answer so quick, Mrs. Mapes. Move to strike the answer so I can make my objection.

(Testimony of Mrs. Charles W. Mapes.)

The Court: The answer may go out. What is your objection?

Mr. Cooke: The objection is it is incompetent, irrelevant and immaterial whether I discussed it with anybody else. That wouldn't be evidence Mrs. Mapes knew anything about it, if I had discussed it.

The Court: In view of her statement, Mr. Platt, she never discussed it with anybody, I can't see how——

Mr. Cooke (Interrupting): He asked whether I had discussed it with anybody.

The Court: Objection will be sustained. [472]

Q. Did you and Mr. Cooke ever discuss these 5 per cent of gross receipts from food sales and 10 per cent of gross receipts from liquors, wines and beer sales and 30 per cent of gross receipts from hotel rooms and apartments, whether that was a reasonable rental?      A. No.

Mr. Cooke: Just a moment.

Witness: Excuse me.

The Court: The answer may go out.

Mr. Cooke: We wish to interpose an objection there. The question is indefinite as to time, whether before September 24, October 4th, or afterwards. If afterwards, it is incompetent, immaterial and irrelevant. If before, it would be equally incompetent, irrelevant and immaterial as being a covenant. Object on the further ground it hasn't any bearing on or connection with the proposition whether the contract is fair or not. The matter of whether Mrs. Mapes thoroughly understood the contract and